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GIFFEN'S CASE AGAINST BIMETALLISM.[1]

MR. GIFFEN, belated, still sits in the seat of the scornful. Bimetallism is to him "a mere delusion," and his language toward its advocates—M. de Laveleye in particular—is hardly parliamentary. He classes them with "the prophets who prophesy that the world is to be enriched by abundant money," and these, he says, "are the detestation of men of sense." Of the bimetallist theory, his judgment, summed up in the fewest words, is as follows:

> It was the unbroken experience of centuries when Locke took up the question, as it has been the experience ever since, that side by side with the legal ratio there is immediately a market ratio; and there is no discernible tendency for the former to govern the latter. The foundation of the bimetallic idea is thus rotten from the beginning, and there is no discoverer or great economist to set against the chain of authorities by whom the opposite system has been established.[2]

Such, in brief, is Mr. Giffen's spirit, and such, in brief, are his views. As to the former, little need be said. The spirit of scorn is so far from being the spirit of science, that it almost precludes the learning of anything new; and in a measure this accounts for Mr. Giffen's retention of ideas which were unanimously expressed by the International Monetary Conference at Paris in 1868, but which are no longer upheld by a majority

[1] The Case Against Bimetallism. By Robert Giffen. London and New York, George Bell and Sons, 1892. — 12mo, with index, 354 pp.

[2] Page 112.

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even of the monometallic half of the Gold and Silver Commission of Great Britain. The scorn of the scorners has always been a favorite theme for the irony of history, and in Mr. Giffen's case time's revenge is being taken sooner than usual. Hardly had our author penned his abuse of the advocates of bimetallism, when M. de Laveleye, with no thought of replying to Mr. Giffen, whom he always treated with a courtesy the latter never returned, had the pleasure of quoting the following lines from Professor Foxwell, of Cambridge, descriptive of scientific opinion in England:

> Cambridge University: Professor Alfred Marshall, bimetallist; Professor Sidgwick, bimetallist. Edinburgh: Professor Nicholson, author of an excellent book on the subject, vice-president of the Bimetallic League. Oxford: Thorold Rogers admits the scarcity of gold, rejects bimetallism. University College of London: H. S. Foxwell, vice-president of the Bimetallic League. Nottingham: Professor J. E. Symes, bimetallist. Liverpool: Professor E. G. Gonner, vice-president of the Bimetallic League. Manchester: Professor J. E. Munro admits the bimetallic theory. London, King's College: Professor Edgeworth inclines toward bimetallism. . . . Whoever refuses to admit that a fixed ratio between gold and silver can be established and maintained by international treaty is no longer considered among us an economist.

This quotation from Professor Foxwell is merely an answer to the unscientific portion of Mr. Giffen's book — his expressions of scorn for his opponents, and his appeals to authority to settle the question at issue. Questions of scientific fact may be settled by such appeals; but the question at issue is primarily one of social justice, and on such questions the average citizen is as likely to be in the right as the most eminent scientist. Appeals to names are therefore as unscientific as appeals to numbers. Mr. Giffen himself cannot afford to have any other rule adopted than that his arguments be taken at their own weight, counting for none the more because of the dead authorities in their favor, nor being thrown out of the scales by the living authorities against them.

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In spite of his belief that a fixed ratio between the two metals cannot be maintained, Mr. Giffen is an economist of the first rank, and in the volume before us he has done as much as any living writer to clarify the discussion of bimetallism. The events of the last twenty years, which have changed the opinions of most of his contemporaries, have not affected those of Mr. Giffen, but he has recorded these events with scientific impartiality. If he has learned nothing from them, he has at least forgotten nothing that was established before. It is an inestimable gain to have a statement of the facts in the case to which both parties must agree, and it is a further gain to have an argument from a monometallist who refuses to reverse his old creed wherever such reversal will support the clamor of creditors against the demands of debtors. The arguments he rejects and the arguments he advances are equally worthy of examining, for he always speaks as a scientist, not merely as an attorney.

The monometallist arguments that Mr. Giffen rejects are briefly as follows:

1. That there is gold enough for an international gold standard.

2. That debtors have not been seriously injured by the appreciation of gold during the last twenty years.

3. That this appreciation of gold has not been due to the successive demonetizations of silver and the consequent demand for gold outrunning production.

4. That the unit of value ought to increase in value.

It is a pity that it should be necessary to state that Mr. Giffen concedes the scarcity of gold; there is no fact so important as this scarcity, and none so completely ignored by American monometallists. At the Paris conference of 1868, when every one favored an international gold standard, there was some reason why every one should favor it. During the two decades preceding, the trouble with the currency had been rather that too much than that too little gold and silver had been mined, and there had been reason for the fear that the unit of value was falling in value. What the increase in

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production had amounted to is shown by the following condensation of Soetbeer's tables:

	Annual production of gold.	Annual production of silver.
1831–1850 . . .	$26,000,000	$30,000,000
1851–1870 . . .	136,000,000	48,000,000

It appears thus that the yearly production of gold alone had become two and a half times as great as the production of both the precious metals had been during the earlier part of the century. Although this enormous influx of money was accompanied by an unprecedented increase in wealth and a still more unprecedented increase of wages, the creditor classes suffered some injury; for the money in which they were being paid represented appreciably less property than the money they had loaned.[1] Under such circumstances the argument in favor of an international gold standard was a telling one. Since 1873, however, this argument has entirely disappeared. The world's commerce has gone on expanding, while the supply of gold available for currency, instead of expanding with it, has actually fallen off, and the non-monetary consumption of gold

[1] On this point Soetbeer's tables, while entirely accurate, are misleading. He takes as his standard of prices the average during the years 1847–50. These, however, were the years in which prices were most abnormally low as compared with the period preceding as well as the period following. The average prices during the decade between 1860 and 1870 were but six per cent higher than during the decade between 1840 and 1850, and the average for the twenty years following the Californian and Australian discoveries were actually lower than for the twenty years preceding. Soetbeer's tables are so frequently thought to indicate that the injury to debtors through the appreciation of gold during the last twenty years simply counterbalances the injury to creditors during the period preceding, that it is worth while to show by Jevons's tables how Soetbeer selected his standard of comparison.

	Jevons's index number.	Soetbeer's index number.
Average prices 1820	103	
" " 1830	81	
" " 1840	87	
" " 1847–50	69	100.
" " 1860	79	120.98
" " 1865	78	122.63

In other words, Soetbeer affixes the index number 100 to the very worst years in the long period of commercial depression which resulted from the diminished production of the money metals during the first half of the century.

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has enormously increased. It may be permitted me to recall Soetbeer's figures upon this point. Between 1851 and 1870, says Soetbeer, the new supply of gold available for currency averaged $92,000,000 a year; between 1871 and 1881 it had fallen to $24,000,000.[1] Mr. Giffen (page 85) goes even beyond Soetbeer in his admissions upon this point. Here is what he says:

> About two-thirds of the gold annually produced is taken for the arts; and if the consumption of India is included, as being either for simple hoarding or for the arts and in no case for the purpose of circulating money, then *the demand for gold for non-monetary purposes appears almost equal to the entire annual production.*

The italics are mine, and the use of "small caps." would seem almost permissible when one finds in the most scholarly of the monometallist papers of New York City such a solution of the silver question as the following:

> The simple fact is that if we need more money, we can supply our deficiency with gold just as easily as with silver. Suppose that we take the present Sherman Law and substitute the word gold for silver wherever it occurs, making the proper change in the number of ounces purchased. . . . Such a law would give us everything in the way of additional currency that we get under the Sherman Law. There is nobody so dull that he can not see that.

There is something peculiarly delicious about this statement, but in its misconception of the facts at issue it differs in no way from the whole body of monometallist attacks upon the Bland Bill and the Sherman Act. The United States is using $50,000,000 of silver a year to supply its need of more currency.[2] The annual supply of gold available for money uses is estimated at $24,000,000 by Soetbeer and at next to

[1] Soetbeer's table condensed is as follows:

Period.	Production of gold.	Non-monetary consumption.	Used for money and reserves.
1851–70 . .	$136,000,000	$44,000,000	$92,000,000
1881–85 . .	104,000,000	80,000,000	24,000,000

[2] As prices have not risen, there is no evidence that this issue is excessive.

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nothing by Giffen. Austria and Russia[1] have already joined Western Europe in the scramble for this $24,000,000 or less, and it is gravely proposed that the United States shall put in an additional demand for $50,000,000! Adam Smith once contemplated the possibility of gold becoming as valuable as diamonds. Apparently such a consummation would not seem a catastrophe to the reckless spokesmen of the creditor classes, who are demanding that the United States shall use gold where it is now using silver.

So much, then, for the utter insufficiency of the gold supply. Mr. Giffen's admissions on this point are all a bimetallist could desire. Next as to the effect of that insufficiency in raising the value of gold and increasing the burden of every debt measured in gold. Here again Mr. Giffen's statistics are substantially those which bimetallists are trying to get before the public. In the essay on "Some Bimetallist Fallacies," written in 1886, Mr. Giffen grants without discussion that the fall in general prices during the fifteen years preceding had been "about twenty per cent in gold" while "hardly appreciable in silver." The estimated fall of twenty per cent in gold prices during the fifteen years following 1870 does not differ greatly from the estimate made by Sauerbeck last autumn that the fall in prices has now reached over thirty per cent. Mr. Giffen, it will be seen, admits the contention of the silver men that an ounce of silver will to-day buy substantially as much as ever. The point Mr. Giffen urges here against bimetallism is that even if bimetallism had continued in operation, "prices would still have fallen ten per cent, as against the fall of twenty per cent that has undoubtedly occurred." This is a novel and pleasing point to have presented by a monometallist. It is much the same point as is made by Mr. Bland, when he urges that under free coinage a silver dollar would continue to buy as much as a gold dollar, since gold would simply lose the artificial value given it by the demonetization of silver, and silver

[1] In the London *Economist* of November 19, 1892, will be found the estimate that the gold reserve in the Imperial Bank of Russia had been increased in two years $120,000,000. The Sherman Act increased our silver purchases but $20,000,000 a year.

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would gain the value of which governmental discrimination has deprived it. Mr. Giffen's contention that even a double standard dollar would buy more than formerly is the best evidence of the moderation of the bimetallists' demand.

As to the cause of the increased value of the unit of value, Mr. Giffen is equally satisfactory. He says, for example, on page 74 :

> A fall of prices from period to period is substantially due, as I have more than once pointed out in former years, to the necessary difficulty of increasing the stock of precious metals [note the plural] so as to keep pace with the multiplication of commodities and the multiplication of the number of the people.

And again, on one of his concluding pages, he sums up in this way :

> There is always and necessarily a direct relation between the quantity of money, that is, the quantity of the standard monetary substance in the market or that can be brought into the market, and prices . . . We see then how widely mistaken those monometallists have been who, in their dislike of bimetallism, have denied that the recent great demands for gold in proportion to its supply were likely to have caused a rise in its exchange value for other things. [Page 219.]

There seems hardly need of argument in support of Mr. Giffen's position on this point. Those who contend that the rise in the value of gold during the last twenty years has not been due to the recent great demands upon it in proportion to its supply, but to improved methods of production, forget that during the preceding twenty years the same improvements in production were going on, yet money values did not fall. During the last forty years the production of wealth has gone on increasing at a uniform rate ; during the first twenty of these years the production of gold and silver increased proportionately; during the last twenty silver has been demonetized and the production of gold has fallen off. The change that has taken place can be traced not to the factor that has remained constant — the production of wealth, but to the factor that has changed — the production of money.

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Mr. Giffen does not belong to that school of monometallists — in this country frequently protectionists — who urge that each nation must have the same standard as its neighbors, because of the commercial relations between them. He takes it for granted that the foreign commerce of a country is no more affected by the standard it employs than by the number of grains of metal in its unit. In any event the rate of exchange must be determined, and it was as easy, for example, to determine the exchange value of Austria's old silver florin as it is to determine that of her new gold crown. The argument in favor of gold based on its alleged advantages for foreign commerce is worth no more than the argument in favor of silver based on its alleged advantages for foreign commerce. Each argument ignores the fact that no change in measuring-rods can give the merchants of one country an advantage over the merchants of another.

But not only does Mr. Giffen recognize the truth of this elementary proposition; he also recognizes the fact that the adoption of gold by so many nations was a distinct reason why other nations should not adopt it.

> Much of the great currency mischief for many years past has arisen from the fact that governments have not left the thing alone. The primary offender in this matter perhaps was Germany, which made a mistake, as I believe, in substituting gold for silver as the standard money of the country. . . . To some extent Italy also has been an offender in this matter, the resumption of specie payments in that country on a gold basis being entirely a work of superfluity; the resumption on a silver basis would have been preferable. [Page 78.]

Elsewhere (page 116) he expresses the belief that the mistake made by these nations is one "which the nations of the world are not now likely to be guilty of." Inasmuch as Austria has just been guilty of it, Mr. Giffen's optimism in this matter reminds us of that of Jevons when he wrote many years ago:

> I am far from denying that if the Italian government decide to carry into effect M. Luzzatti's threat of buying gold at all hazards, and

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if the like course be taken by the United States and France, not to speak of Germany, there might be considerable disturbance of values for a time. But is it likely that such proceedings will be taken by rational statesmen and rational parliaments? It is really too absurd to suppose that any country will insist upon having a gold currency at any cost.

Both of these scientists forgot that the currency problem represents, not a conflict of opinions, but a conflict of interests. The policy that is an absurdity for the nation embodies the most obvious self-interest of the creditor classes; and these classes despotically rule the governments everywhere except in the United States and Great Britain.[1] These classes, which a generation ago, when silver became the scarcer metal, demanded an exclusive silver standard, and actually secured it in Holland and Belgium, have been demanding an exclusive gold standard ever since gold became the scarcer metal. Here is the record of their success:

1872. Norway, Sweden and Denmark substitute the gold standard for the silver standard.

1873. The United States unconsciously[2] demonetizes silver. Germany substitutes the gold standard for the silver standard and begins to sell silver. The Belgian parliament authorizes the government to suspend the coinage of silver.

1874. France and the entire Latin Union suspend the free coinage of silver, France substituting the gold standard for a double standard.

1875. Holland, having suspended the coinage of silver in 1873, now formally demonetizes it, and substitutes the gold standard both for herself and her East Indian colonies.

[1] Though England is by all odds the greatest creditor nation in the world, and her citizens pay the income tax on $5,000,000,000 of foreign investments, yet justice to debtors is far more regarded by her parliament than by any parliament on the continent.

[2] An examination of the debate shows that some Congressmen knew that silver was demonetized in the act of April 12, whose avowed purpose was to codify the mint regulations. Even these Congressmen, however, attributed no practical importance to the fact, and did not dream that they were altering existing contracts by denying debtors the right to pay in the cheaper metal.

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1873–75. The Bank of France retires $350,000,000 of paper money, and greatly increases its gold reserve.

1879. The United States resumes specie payments in gold.

1883. Italy purchases gold to resume specie payments.

1891. Austria, which for several years has had a paper currency payable in silver, but above par in silver bullion, openly abandons the silver standard and substitutes gold.

Not only, then, has the production of gold fallen off since 1870, and its non-monetary consumption enormously increased, but all these nations have added to the governmental demand for it. No wonder, therefore, that Mr. Giffen is unwilling to join himself with those who deny that the unit of value has risen in value because of failing supply and enormously increased demand.

This brings us to the last of Mr. Giffen's concessions. He recognizes that the unit of value ought not to increase in value. Here of course he has all the classic economists on his side, Hume having even urged that the unit of value ought gradually to decrease in value. Mr. Giffen is not a socialist, and he has too much intellectual honesty to contend that between debtor and creditor, any more than between employer and workman, equal amounts of labor instead of equal values ought to be exchanged. Between nations and between individuals the labor unit is entirely discredited. When we buy goods of India, we do not pay the same amount of labor we receive, but the same value of labor. When a political economist employs a cook, he does not pay her the same amount of labor he receives, but (presumably) the same value of labor. In the same way, where the debtor is a laborer, it is his duty to pay back, not the same amount of labor he borrows, but the same value of labor. If the efficiency of his labor increases, that increase belongs to him and does not increase his obligation to his creditor or the obligations of other debtors to their creditors. Only in so far as the creditors take part in labor are they entitled to benefit by its increasing efficiency. In so far as they are creditors, *i. e.*, holders of property produced by past labor, they are only entitled to the property

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which that labor produced; the property produced by present and future labor belongs to those participating in its production.[1] This brings us back to the real point to be considered. It is not labor that is borrowed and loaned, but property — the products of labor. Nothing is clearer, therefore, than that the unit in which debts are measured ought constantly to represent the same amount of property or products of labor. This is precisely what it has failed to do since the demonetization of silver, and Mr. Giffen fully recognizes it. In another essay, "The Growth of Capital" (not included in the present volume), Mr. Giffen found that while the money value of the capital of the United Kingdom had increased 44 per cent during the decade 1865–75, it increased but 17½ per cent in the decade 1875–85. "Something," he says, "must have happened to diminish the rate of the accumulation of capital as expressed in money."[2] This something he found to be the appreciation of gold. In 1885 he estimated that the same amount of gold represented fifteen per cent more property than in 1875. This change of fifteen per cent during the decade[3] corresponds to a change of nearly thirty per cent during the two decades since the demonetization of silver. In other words, the appreciation of gold has added nearly thirty per cent to the amount of property which creditors may require of debtors in discharge of obligations.

This completes the list of Mr. Giffen's concessions — a list much more important than that of his contentions, since around it the whole controversy in America has been waged. The American monometallists have shown themselves much better politicians than Mr. Giffen, though much worse scientists. In refusing to admit that the inadequacy of the supply of gold to

[1] This proposition has on its side not only the instincts of all plain people, but also the authority of the classic economists. It is not worth while, therefore, to examine the statistical exaggerations of the advocates of an anti-socialistic labor unit.

[2] The Growth of Capital, p. 46.

[3] "It is most important, in fact, to keep in mind that we are not dealing here with the whole fall of prices which has occurred since what is called the appreciation of gold began, but only with what has occurred in a particular period of ten years." *Ibid.*, p. 53.

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the increasing needs of commerce has brought about an appreciation in its value which has forced and is forcing debtors to pay creditors more property than they borrowed, American monometallists have shown a shrewd sense of the really important considerations. As politicians they deny the wrong in order to deny the remedy; Mr. Giffen, as a scientist, admits the wrong, but feels no obligation to supply a remedy.[1] The whole burden of his argument is that bimetallism does not furnish a scientific remedy. This he maintains with passionate vehemence. His main theses are as follows:

1. That it is not the function of government to manage the currency.

2. That "whatever governments may say, it does not follow that great commercial communities will be obedient."

3. That governments could not agree upon a bimetallic plan.

4. That governments never did keep the two metals at a fixed ratio.

5. That governments never could keep the two metals at a fixed ratio.

The first of these contentions requires but a word. Mr. Giffen's clients, the creditors, would be the last persons in the world to deny that it is one of the prime duties of government to protect creditors from the evils of inflation through unregulated bank issues. Without controversy it is equally the duty of the government to protect debtors against the evils of contraction. What Mr. Giffen says about the incompetence of a government, "especially a democratic government," to deal with this question, is the veriest Herbert Spencerism. The enforcement of justice between debtor and creditor is as important as the enforcement of justice between any plaintiff and any defendant. The power can be safely lodged nowhere except with the government, and it can be impartially adminis-

[1] There is a suggestion of a paper-money remedy in certain isolated sentences like the following: "A country rising in the economic rank advances from the use of copper and nickel mainly to a larger use of silver; from silver in the same way to gold; and from both silver and gold to paper and other substitutes for metallic money" (page 96).

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tered only by a government which is as much concerned for the interests of debtors as for the interests of creditors.

Mr. Giffen's second contention — that governments would be powerless to secure the acceptance of bimetallism by the mercantile communities under them — is also unsustained by his clients. With a true instinct as to their strongest plea, they assert that according to Gresham's law the dearest metal would at once disappear from circulation, and only the cheaper one remain. As Mr. Giffen himself accepts this law, it is difficult to understand how he can doubt the power of the government to force upon the public the money which he maintains would be the cheaper. According to Gresham's law the people would soon use nothing but the cheaper.[1] Mercantile communities are to-day using exclusively gold, because government interference prevented the natural operation of Gresham's law.

Mr. Giffen's third contention, that it is impossible to secure international agreement upon a bimetallic plan, is much more forcible. It is true that if monometallism loses as rapidly during the next twenty years as it has lost during the last twenty, there will be none left to defend it. Yet even when monometallism shall have been abandoned, the creditor classes

[1] Mr. Giffen's history at this point has some resemblance to his logic. The two examples he gives of the power of mercantile communities to resist a change in the standard are both American. One is the decision of the New York banks "not to accept any of the [Bland-Allison] silver coins which the government had just issued as full legal tender"; and the other is the rejection of greenbacks by Californians during the Civil War. As a matter of fact the New York banks only attempted to prohibit the payment in silver of their clearing-house balances. They not only accepted silver as full legal tender for debts, but received it on deposit (see Taussig Silver Situation in the U. S., page 17). Likewise in California the mercantile community was able to resist the operation of Gresham's law only by the help of the provision in the state constitution against the use of paper money, followed by Justice Field's peculiar decision that taxes owed the state government were not debts in such a sense as to be payable in legal tender notes, and the act of the California legislature providing for the enforcement of specific contracts in gold and silver. It may be added that specific contracts of this sort were forbidden by the French government in behalf of the notes of the Bank of France during the Prussian war. Had Congress protected its own notes in the same way, the legislature of California would have been as powerless to prevent the use of greenbacks as her mercantile community found itself without legislative assistance.

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can still for an indefinite period control certain nations in resisting the establishment of the old ratio. It is not likely that any great nation whose government is heartily opposed to the wrongs monometallism inflicts upon the debtor class will await international agreement before taking action. A nation heartily opposed to the taxing of the poor would as soon think of awaiting international agreement before adopting free trade.

It is, however, Mr. Giffen's fourth contention upon which he lays the stress of his argument. He devotes an entire chapter to "The Alleged Bimetallism of France, 1803–1873," and elsewhere urges that the belief that governmental action has kept the two metals together is a central fallacy of bimetallists. It is a grief to him that on this point the monometallists on the English Gold and Silver Commission united with the bimetallists in affirming that the French legal ratio did tend to keep the market ratio the same. He refuses to those royal commissioners the name monometallists, and terms them "non-bimetallists." The facts, he says, have been "steadily misrepresented for years," and he sets to work vigorously to correct the erroneous impression the world has had upon this point. Here is his argument:

> In 1886, in a paper read at the Bankers' Institute, I published the figures of the actual premium on gold in Paris on the first of each month for the years 1820–1847 — the greater portion of the period — which placed the fact beyond doubt that gold and silver did not pass in all that time at the legal ratio, but that gold varied in price usually between one-half per cent and two per cent premium, with not very frequent and not very lengthened lapses below one-half per cent and not one date being mentioned on which there was not a premium of some sort. These premiums were quite sufficient to make the practice different from the law. At anything over even one-quarter per cent premium for gold,[1] no man alive would pay a debt in gold that he could pay in silver without a premium, and consequently the demand for gold for standard and for unlimited legal tender in France was all this time in suspense. . . . When I wrote the paper for the Bankers' Institute, I had

[1] Or even one-hundredth of one per cent.

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no figures for the period from 1803 to 1820 before me; but I may now refer to the ratios of Soetbeer.

Here follow portions of Soetbeer's tables giving the ratio between the average prices of gold and silver bullion in the London market between 1803 and 1873. The French ratio is 1 to 15½ and the extreme variations during each decade are as follows :

1803	1 : 15.41	1849	1 : 15.78
1808	1 : 16.08	1850	1 : 15.78
1813	1 : 16.25	1859	1 : 15.70
1814	1 : 15.04	1861	1 : 15.19
1820	1 : 15.62	1862	1 : 15.35
1821	1 : 15.95	1869	1 : 15.60
1832	1 : 15.72	1871	1 : 15.57
1833	1 : 15.93	1873	1 : 15.92
1843	1 : 15.93		

These tables are likewise published by bimetallists to prove that the free coinage of both gold and silver in France did keep the coins of the two metals at par with each other, and thus established a bimetallic standard. The facts, then, are agreed upon. What about the conclusions ?

A moment's consideration will show how far afield Mr. Giffen has gone in maintaining that France was mistaken in believing that she had had the concurrent circulation of the two metals under her bimetallic law. The points he fails to consider are these : (1) Soetbeer's prices are London prices ; (2) both Soetbeer's prices and his own are the prices of silver bullion and not of coined silver, and coinage in France, though free, was not gratuitous.

The extreme ratio in the price of silver bullion in London, it will be noticed, was reached during the Napoleonic wars, when trade between England and France was practically suspended. In 1833, when the next lowest ratio was reached, the lowest price of silver in London was 58¾ pence an ounce, while the French mint price was 60⅞. We do not know what was the cost of carrying silver in wagons and ships from London to Paris, but we know that to-day the cost of shipping gold is

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three-eighths of one per cent[1] and the cost of shipping silver half a century ago was probably four times as much. To say that silver coin was not at par with gold in France because silver bullion was 3⅓ per cent cheaper than gold in London, is as bad reasoning as if one should say that gold coin in Australia was not at par with itself in 1852 because the price of gold bullion in Australia fell to 60 shillings an ounce, while the mint price in London was 77 shillings 10½ pence. If the cost of transporting gold bullion from Australia to London accounts for its discount of 20 per cent in Australia, surely the cost of transporting silver bullion from London to Paris more than half accounts for the discount of 3⅓ per cent in London.[2]

The other half of the discount is accounted for by the charge for mintage in France. Up to 1835 this was 1½ per cent for silver and three-tenths per cent for gold. Unless silver coin had been worth 1½ per cent more than silver bullion in Paris, the bullion would not have been brought to the mint; and yet there is but a single year during the bimetallic period when even Mr. Giffen's tables show that gold bullion averaged 1½ per cent dearer than silver bullion. But this is not all. The mint charge is only a part of the cost of mintage. "The proceedings of a government office," as Thorold Rogers says, "are measured, not to say slow," and during the period of delay the

[1] Norman, Metal Monetary Systems, page 289.

[2] Cairnes, Essays in Political Economy, page 25. Mr. Giffen has so much to say about the bimetallist fallacy of a "mint price" that it is worth while to quote a few of Cairnes's sentences: "There was at this time no mint in Australia; the increasing requirements for coin could only be met by the transmission of bullion to London, there to be coined and afterwards reimported, and this process required six or eight months at least for its accomplishment. Pending the arrival of the new coins, prices were not, indeed, prevented absolutely from rising; for numerous expedients were in their absence freely resorted to for supplying the place of the ordinary currency; but, nevertheless, prices were by the straitness of the circulation kept very considerably under their natural level, as determined by the cost of gold — a fact which was sufficiently proved by the remarkable fall in the price of gold throughout the whole of this period." The fall referred to was from £3 17*s.* 10½*d.* per ounce, the London mint price, to 60*s.*, 50*s.* and, it is stated, in some instances 40*s.* per ounce. Uncoined silver bullion has never fallen so low in the United States.

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applicants' bullion is "dead capital yielding no profit, and not even any interest." The real cost of coinage in France, therefore, was much greater than the charge for mintage, and Mr. Giffen's tables, instead of showing that the two coins could not have circulated together, prove that they must have circulated together, since the bullion of one was never as valuable as the coin of the other.

Even this, however, is not the most decisive point. Throughout this entire period both gold and silver were brought to the French mint and coined. Even in the year 1833, when Mr. Giffen says that gold in Paris was at a premium, averaging nearly 1.6 per cent above silver, $1,500,000 in gold twenty-franc pieces were issued.[1] Mr. Giffen says with truth that "at anything more than one-quarter per cent premium for gold [or even one-hundredth per cent], no man alive would pay a debt in gold which he could pay in silver without a premium": and it is equally true that if gold were at any premium whatever, no man alive would pay over one-quarter per cent to get it coined; for the coin would have simply its bullion value. During the period from 1820 to 1847 $60,000,000 in gold were issued from the French mint, and in the decade following 1847 $127,000,000 in silver were issued, showing not only that neither metal reached such a premium that its old coins were converted into bullion, but also that neither metal reached such a premium as to prevent its owners from paying for the privilege of adding it to the coinage.

Mr. Giffen's ancient history of coinage is as defective as his modern history. Apparently conscious that the marvellous uniformity in the ratio of gold and silver bullion in London between 1803 and 1873 would continue to be traced to the bimetallic law in France, he has recourse to the following argument:

> There is one remarkable experience of bimetallism, in which unquestionably there were variations in the ratio of gold and silver, in a period about the same as 1803–73, amounting to more than 25 per cent. Dr. Soetbeer gives the following ratios of gold and silver:

[1] See Laveleye, La Monnaie et le Bimétallisme International, p. 175.

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Year.	Ratio.
1581–1600	11.80 to 1.
1600–1620	12.25 to 1.
1621–1640	14.00 to 1.
1641–1660	14.50 to 1.
1661–1680	15.00 to 1.

. . . The experience of 1803–73 is more than set off by the experience of the first half of the seventeenth century.

Mr. Giffen could not have picked out a happier illustration for his opponents. In the first place, during the earlier part of the period covered the currency was not bimetallic. As Thorold Rogers says:

> Up to comparatively recent times the currency of Europe was silver. It was so during the middle ages; it was so long after the discovery of the great American mines at the conclusion of the sixteenth century. For all practical purposes gold was not a currency in England till the seventeenth century.[1]

The extraordinary rise in the value of gold in the sixteenth century was due to the change from silver monometallism to incomplete bimetallism, thus creating an enormous demand for gold as currency. Soetbeer's tables show that the production of gold increased one-fourth during this period, while the production of silver fell off one-third. If production governed the prices of the precious metals, gold would have fallen and silver risen. The fact that gold rose twenty-seven per cent by reason of the currency demands, gives an illustration of the power of governments to regulate the price of the precious metals that is second only to the illustration afforded by the success of national bimetallism in France. The natural comment of Thorold Rogers upon the history of this very period is as follows:

> The principal and important inference that one can draw, and with absolute confidence, as to these early prices of gold, is that the fundamental cause of value in the precious metals is their use as currency.

[1] Industrial and Commercial History of England, pages 320–327.

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Mr. Giffen's last contention — that governments can not keep the two metals at an agreed ratio — is part and parcel of his contention that they never yet have done so. Indeed, he would not have urged that France did not have bimetallism, had he not believed *a priori* that she could not have had it. He maintains that the industrial value of gold fixes its currency value. This is so far from being true that its exact opposite might be maintained with greater force.[1] Neither proposition, however, is entirely true. The demand for gold for industrial purposes is not entirely dependent upon its currency value, and the demand for it as currency is not at all dependent upon its industrial value. The currency demand is simply the more important of the two. Most men care for gold entirely because of its currency value. Demonetize it, and the greater and less resistible part of the demand is gone. The past accumulations of gold currency become bullion, pressing upon the bullion market and yielding no interest to their possessors until sold. It would take twenty-five years for the present industrial demand for gold ($100,000,000 a year) to absorb the existing coin supply, even if the gold-mining industry were abandoned. By the time one-third of the gold coin had been thrown upon the bullion market, its value would probably be as low as the present value of silver bullion, to say nothing of the value that silver bullion would have when every dollar of this gold that has been taken from circulation has created an irresistible demand for the same amount of silver. The bimetallic law, which demonetizes one metal the moment it is held above the legal ratio, and makes currency exclusively of the other metal, does not need to be universal in order to

[1] The British Gold and Silver Commission unanimously speak as follows of the effect of the bimetallism of the Latin Union upon the price of silver used for non-monetary purposes: "The fact that the owner of silver could in the last resort take it to those mints (the mints of the Latin Union) and have it converted into coin which would purchase commodities at the ratio of 15½ of silver to 1 of gold, would in our opinion be likely to affect the price of silver in the market generally, whoever the purchaser and for whatever country it was destined. It would enable the seller to stand out for a price approximating to the legal ratio and would tend to keep the market steady at about that point." I confess my indebtedness to Mr. Giffen for the citation.

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hold the two metals together for a long series of years.[1] By means of it, France was able to hold its gold and silver coin at par during years when the production of silver was three times as great as the production of gold, and also during years when the production of gold had suddenly become three times as great as the production of silver. It is not only the logic of history but the logic of supply and demand, that a nation as great as France could to-day hold together the two coins, when the ratio of their production is far away from either of the old extremes.[2]

[1] This argument, it will be noticed, is in no way based upon the power of governments to keep even costless government notes and bank notes at par with gold, so long as these notes are not issued in such volume as to drive all gold out of circulation. Yet governments do possess this power, as Mr. Giffen would not deny.

[2] The present ratio in the production of the two metals is about 3 to 2 ($180,000,000 of silver to $120,000,000 of gold). The non-monetary consumption of silver (including India's consumption) is estimated by Mr. Giffen at "about one-half of the annual production," leaving less than $100,000,000 to be used as money. For some years after 1855 the coinage of France alone exceeded this amount (Laveleye, La Monnaie et le Bimétallisme International, p. 103), without any perceptible inflation of prices. When we take into account, therefore, the normal demand for subsidiary silver in Europe, and for standard silver in South America, it is doubtful if the available silver supply exceeds the normal monetary demands of the United States. The secretary of the treasury estimates that for the past decade we have added $60,000,000 a year to our currency, and while Mr. Taussig is probably right in urging that the Treasury over-estimates the additions to our gold supply, yet as these have been years of falling prices, the supply has not been normal. It will not do, indeed, to affirm that the United States is a more powerful factor in the monetary situation than France because its population so greatly exceeds that of France. The French people use more money than the American people to transact the same amount of business, and their supply of money is to-day about the same as ours. Yet the fact that our population is increasing more than one million a year, while hers is stationary, enables America to absorb new currency without inflation to an extent that France could not. Whether or not, however, the United States can perpetually keep silver at a par with gold, is not the question. It is the duty of each generation so to regulate the currency supply that the same amount of money shall represent the same amount of property, securing substantial justice between debtor and creditor and preventing the injurious uncertainties in business enterprises attending hap-hazard contraction and inflation. There is little more *a priori* reason that bimetallism should prove a permanent solution of the currency problem than that gold monometallism should have proved such a solution. Had the production of gold continued to expand in proportion to the demand for it, there would to-day be no popular demand for bimetallism. A few years hence bimetallism may prove equally unsatisfactory. It is not within the power of any generation to solve the problems

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Either in what he concedes or in what he contends, Mr. Giffen's discussion covers substantially the whole field of the controversy in America. The two most important points not mentioned in the volume before us are the monometallist contentions (1) that the expansion of credit currency has made up for the failure of the gold supply, and (2) that whatever the injury to debtors since the appreciation of gold began, most existing debts have been made during the last few years and should be paid in the same appreciated standard in which they were made. This last point is by all odds the most important, and contains a large element of truth and justice. It is not the duty of the government to attempt to right the wrongs of ancient history, but to render substantial justice among living men. Twenty years ago, when the question was before the public whether the greenback should be restored to par and all existing debts increased twenty per cent, the same plea was made in behalf of the debtors that is now made in behalf of the creditors. So far as social justice is concerned, the plea then was stronger than the plea now, inasmuch as the change proposed in favor of creditors was greater than the change now proposed in favor of debtors, and inasmuch as a larger part of the existing debt had been created under the existing standard; yet the nation decided that justice between the debtor class and the creditor class was not gauged by the dates of existing contracts, but that the creditor class, which would gain by the restoration of the rightful standard, was in large measure the same as that which had lost through its abandonment. If that was true then, it is much more clearly

of the future. It is its duty to right its own wrongs and leave the future free to right its wrongs. By the free coinage of silver the nation still keeps its hand upon the brakes. If the free coinage of silver — the conferring of interest-bearing and debt-paying power upon $80,000,000 of silver bullion a year — fails to keep this money at par with gold, it is within the power of the national government at any time to limit or suspend this coinage, restoring the present parity. If, however, it trusts that banking paper, costing nothing, can be kept at par with gold, if all the bankers in the country are permitted to issue as much of it as their state legislatures will allow, we might have the currency inflated by a thousand millions one year, and this whole amount wiped out the next, if the people in a panic called upon the banks for the non-existent gold.

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true to-day. The public debt of Christendom (upwards of twenty-five thousand million dollars) was nearly all the creation of a period before silver was demonetized, while the corporate and private indebtedness of the United States (nearly fifteen thousand millions [1]) is still in a considerable measure the legacy of a time when the legal-tender dollar was depreciated twenty per cent below the silver dollar. The instinctive feeling that justice between debtor and creditor classes demands that the money in which debts are paid shall be as nearly as possible of the same value as that in which they were made, would carry us much further than the free coinage of silver. That measure does not propose to restore to the standard its ancient value, but simply the value it would have if legislation had not interfered to demonetize silver and give to gold its constantly appreciating value.

The other point raised by American monometallists which is not covered by Mr. Giffen in the volume before us, is the contention that the employment of credit instruments has offset the failure of the gold supply. Inasmuch as a few writers who are usually careful have made much of this point, it is worth while to repeat what Mr. Giffen said about it in his paper on "Trade Depression and Low Prices," in the *Contemporary Review* for June, 1885. A single sentence will suffice:

> It is suggested that the increase of banking facilities and similar economies in the use of gold may have compensated this scarcity. But the answer clearly is that in the period between 1853 and 1863 down to 1873, the increase of banking facilities was as great relatively to the arrangement existing just before as anything that has taken place since.

No one who seriously considers the money basis necessary for bank notes, the immense expansion of the field in which exclusively money payments are made (through the displacement of house work by factory work, and the disappearance of truck payments of every sort), and above all, no one who con-

[1] This is the estimate of Mr. George K. Holmes, the head of the mortgage department of the Census Bureau, and by all odds the most competent scientific authority upon this question.

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siders that since 1873 the three great nations of France, Italy and the United States have returned from paper money to coin, can wonder that Mr. Giffen, who is a statistician, should have conceded this point without a struggle.

In conclusion a word should be said as to Mr. Giffen's chapter upon the American situation. He entitles it "The American Silver Bubble," and sets out by referring to Bagehot's remark that the United States is a country for exemplifying on a large scale the old truths of political economy. It is true that the United States has made some blunders on a large scale, where it has permitted powerful and interested classes to do its thinking for it; but it has yet to make a great blunder where it has been forced by its own experience to reject the teachings of such classes. Upon the silver question it has thus far chiefly exemplified upon a large scale the fallacies of monometallist political economists. Their predictions that the Bland dollar would presently fall to its bullion value have come to naught, and Mr. Giffen hesitates to predict that the Sherman dollars will fall below par. "So long," he says, "as the quantity of notes issued is strictly limited, and the government receives them freely for taxes and dues and pays them out only in exchange for the equivalent of gold, they will remain on a level with gold." This is clearly thought out. Bland dollars remained at par, though not redeemable in gold and never redeemed in gold, and notes issued under the Sherman act need a gold reserve back of them just as little.[1] Nothing can be more absurd than the cry that there will be "repudiation" and "depreciation" if this last issue of notes is redeemed in silver. Already four hundred million dollars redeemable exclusively in silver are circulating without depreciation, and if the anti-silver leaders really believe that this nation cannot maintain at par fifty millions a year of standard silver currency, they ought to rejoice in the opportunity to test the point and check the free-coinage agitation.

[1] Through the courtesy of Senator Sherman the writer has obtained from the Treasury Department verification of the statement that certificates issued under the Bland-Allison Act have never been redeemed in gold by the Treasury.

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The absurdity of the Sherman Act lies in the construction placed upon it by the administration. The notes issued under it were intended to be redeemed in the silver against which they were issued. The proposition to issue bonds to purchase gold with which to redeem them, is a declaration that those who passed this act voted to spend fifty millions a year for paper on which to print promises to pay gold. The repeal of the Sherman Act that is demanded by bimetallists of all parties and all shades, is a repeal by which the silver currency issued shall be standard dollars, and not ridiculously costly greenbacks straining still further the demand for gold.

Apart from the sentence above quoted Mr. Giffen's discussion of the "bubble" we began blowing fifteen years ago is much less lucid than that of the anti-silver bankers of the United States. He contends that the Sherman Act increasing our silver purchases twenty millions a year did more for the gold price of silver than free coinage could have done, and that it did nothing for the "inflationists" because "prices will not rise and money will not be abundant . . . so long as the gold standard remains." As to the price of silver, every monometallist agrees with every bimetallist that free coinage might have added fifty millions a year to the demand and would have added indefinitely more if gold had begun to go out of circulation. As to "inflation," Mr. Giffen's dictum is rejected with equal unanimity. As recently as in 1890 general prices rose along with the increased supply of currency, and Mr. Giffen, in contending that an increased currency does not involve higher prices, has arrayed against himself not only the instincts and experience of every creditor and every debtor in the world, but also the teachings alike of political economy and statistical science. The classical economists lay down with mathematical precision the doctrine that doubling the currency means the doubling of prices, even if the currency be gold itself, while the immense rise in gold prices at the times of the great paper issues statistically illustrate how much of truth there is in this generalization. Not only in the United States, but everywhere in the world, creditors have instinctively contended

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for the contraction of the currency and debtors have instinctively contended for its inflation; and each class has simply recognized its own obvious interests. Mr. Giffen makes a characteristic mistake when he complacently says that on this head "there is a complete deception on the part of the people of the United States," and he makes it a little amusing when he speaks of the want of "common sense" among us. The people of the United States have all the world on their side when they believe that more currency means higher prices, and less currency means lower prices; and they do not need to have anybody on their side to convince them that the present trouble is prices too low and not prices too high. No political party would have dared to go before the American people on a platform demanding less silver currency, and no public officer claiming to represent the people can vote to lessen this currency. What is immediately needed is an act giving us a silver currency which is not a promise to pay gold; and what is then needed is a vigorous campaign of education to bring before people in the East the facts which have already converted the people of the West and the South. For this campaign, Mr. Giffen, by his absolute honesty as a statistician, has rendered an invaluable service.

CHARLES B. SPAHR.

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THE THEORY OF THE INHERITANCE TAX.

THE inheritance tax occupies a unique position in the science of finance. It is to be considered not only as a fiscal imposition, but also as a modification of the law of inheritance and bequest. The theory of the subject is therefore complex and many-sided. Inheritance and bequest may be restricted in two directions — according to relationship and according to amount; the circle of relatives between whom inheritance operates may be narrowed, or a limitation may be put upon the amount which one person may receive from the estate of another. Corresponding to these two methods of limitation there are two arguments for the inheritance tax, (1) that which looks to the limitation of collateral inheritance or the extension of escheat, and (2) that which concerns itself with the effect on the diffusion of wealth. Regarding the tax as a fiscal imposition, it may be considered either as a fee or as a tax — as a payment in return for benefits received, or as a public contribution according to the ability of the tax payer. Each of these two conceptions, again, may be supported by either of three different arguments. The payment may be regarded as (3) a return for government services in general, or (4) for special services connected with the system of inheritance and bequest, according to the value of the service to the individual, or (5) as a means of defraying the cost of probate courts; and accordingly we have what may be called the partnership, the value of service and the cost of service arguments. Leaving the matter of individual benefit out of consideration altogether, the inheritance tax may be explained as (6) a payment of back taxes evaded during life, (7) a property tax paid in a lump sum once in a lifetime, or (8) a tax on a particular form of accidental income. Let us briefly consider these eight theories in order.

1. The abolition of intestate inheritance as to all but the nearest relatives has been advocated by writers of the most

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diverse economic views. Bentham, Enfantin and Bluntschli may be cited as representative examples. The operation of intestate inheritance between distant relatives is justly attacked as irrational and useless. In modern times the family consciousness extends scarcely further than to cousins-german, and there is no good reason for extending rights of inheritance to the more remote degrees of relationship. But since it is difficult to fix a precise point at which they should cease altogether, it is perhaps more equitable to take away these rights from some relatives only in part, by an inheritance tax graduated according to relationship and rising to a high percentage in the case of distant relatives. Even Bentham, who refused the name of taxation to his system, practically proposed a tax graduated according to relationship: direct heirs were to be exempt; grandparents, uncles and aunts were to pay one-half; and from more distant relatives in case of intestacy the state was to take the whole.

This argument for the inheritance tax applies primarily to cases of intestacy; yet such a limitation of intestate inheritance might well be accompanied by a corresponding limitation of bequest, and necessarily would be if the purpose of the measure were at all fiscal.

2. As the devolution of property may be restricted in one direction by an inheritance tax graduated according to relationship, so it may be limited as to amount by a progressive inheritance tax. It has sometimes been proposed to set an absolute limit to the amount which any person may acquire by inheritance or bequest, in order to prevent the perpetuation of immense fortunes. Such a measure was proposed by John Stuart Mill, and only a few years ago a bill to limit inheritances and bequests to $500,000 in the case of direct heirs and $100,000 in other cases was introduced in the Illinois legislature, on the recommendation of a special committee of the Illinois Bar Association. The limitation of inheritance in some such way as this has been so frequently proposed of late that it must be regarded as at least a possibility of the future. If it is to be realized, it would better be by means of a progressive inheritance tax; for it would be less arbitrary to adopt such a

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graduated scale than to fix a point up to which inheritance and bequest might operate without limitation, and at which they should abruptly cease. If the amount which may be acquired by one person from the estate of another is to be limited absolutely, the tax must rise to one hundred per cent of the excess over a certain amount; but this is not necessary in order that the tax may operate to some extent as a limitation of inheritance. Any progressive inheritance tax will diminish large inheritances by a greater proportion than small ones, and if the progression is made to depend upon the size of the separate shares rather than that of the whole estate, it will tend to diffuse wealth in another way also, by encouraging the division of estates. It is plain that in order to act as a limitation on the amount of inheritances the tax must be progressive, or at least small amounts must be exempt, for otherwise large amounts would be diminished by no greater a percentage than small ones. Where the matter of the limitation of inheritance is involved, the question of progression in the inheritance tax is quite distinct from the question of progressive taxation in general; and this is doubtless one reason why many writers have considered inheritances a peculiarly fit subject for progressive taxation. John Stuart Mill, for example, wrote on this point as follows:

> I conceive that inheritances and legacies exceeding a certain amount are highly proper subjects for taxation: and that the revenue from them should be as great as it can be made without giving rise to evasions, by donation *inter vivos* or concealment of property, such as it would be impossible adequately to check. The principle of graduation (as it is called), that is, of levying a larger percentage on a larger sum, though its application to general taxation would be in my opinion objectionable, seems to me both just and expedient as applied to legacy and inheritance duties.

The basis upon which this opinion rests is not altogether clear. The reasons here given are really reasons for high rates rather than for progressive rates. But a few sentences before the passage just quoted, Mill let fall a remark which shows that the limitation of inheritance as to amount, which he expressly advocated in another place, was in his mind also in this con-

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nection. "It is not the fortunes which are earned," he said, "but those which are unearned, that it is for the public good to put under limitation." Moreover, he referred in the same paragraph to his proposal to limit inheritances absolutely.

Whether inheritance should be limited as to amount is a fairly debatable question, on both sides of which there is much room for argument. If property is to be regarded as belonging to the family as a whole rather than to the individual members, unlimited inheritance within the family follows as a necessary consequence. But the right of inheritance within the family is already greatly restricted by an unlimited freedom of bequest; a system of law which recognizes no *Pflichttheilsrecht* or *portion légitime* cannot be said to rest upon the family idea of property. Our whole system of inheritance seems to be contrived not so much to secure any rights to the surviving family, as to carry out the supposed wishes of the deceased. Sir Henry Maine has shown that bequest was first introduced into the Roman law not as a limitation upon inheritance, but as a means of protecting the rights of the real family against the artificial distinctions of the Roman family law, and to provide heirs where there were no immediate relatives. The original reason for the power of bequest, then, has disappeared; but the common law recognizes it to such an unlimited extent that it has come to be considered by many as almost a natural right. Surrogate Ransom, of New York, writes of "the absolute right both in morals and in law of a man to dispose of all his property" by will; and adds: "His right to so dispose of his property is as certain and sacred as his right to dispose of it by sale or gift during his life." As a statement of the common law rule, this is true enough, and it is doubtless a useful principle in deciding contested will cases; but it is by no means so clear that it will withstand criticism as an ethical principle. Nor is it now absolutely true as a statement of law, even in America. A recent Wisconsin statute,[1] for example, limits the freedom of bequest in a very marked degree by prescribing that no person leaving a widow, child or parent shall bequeath more than half his

[1] Laws of 1891, chap. 359.

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estate to any benevolent, charitable, literary, scientific, religious or missionary society. From this it would be only another step to make the prohibition apply to bequests to individuals as well, preventing the disinheritance of children altogether.

Of the two institutions, inheritance and bequest, inheritance is the older historically, and seems to have the better reason for its existence. Its basis is found in the fundamental facts of family life, and in the duty of support which the father owes his children. It does not follow, however, that even the right of inheritance within the family should be unlimited. The duties of a father to his children include support during childhood and a suitable education and start in life; but no rule of morals requires the father to leave his children wealthy if he happens to be wealthy himself. It may be better for them in every way to be left with only a moderate amount of property. The inheritance of a large fortune may prove an encouragement to idleness rather than an incentive to industry, and may result in injury both to the heir and to society. It may have been some such thoughts as these which led to Montesquieu's remark: "La loi naturelle ordonne aux pères de nourrir leurs enfants, mais il n'oblige pas de les faire héritiers."

The diffusion-of-wealth argument shows a nearer approach to socialistic tendencies than any other argument for the inheritance tax. It is the argument of the Nationalists, but it is also the argument of Mr. Andrew Carnegie when he favors a progressive inheritance tax rising as high as fifty per cent. In *The New Nation* Mr. Edward Bellamy carries this argument so far that he is not willing to permit any graduation except according to amount; he denounces the graduation according to relationship as absurd and vicious, and expresses the belief "that the drastic application of the inheritance tax is eventually to be one of the most efficacious instruments in preparing the way for economic equality." But such utterances on the part of socialists must not be allowed to create the impression that the limitation of inheritance by a progressive inheritance tax is essentially a socialistic measure. Inheritance and bequest are not only not natural rights, but they are not even neces-

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sary consequences of the right of private property. The right to enjoy property during life does not necessarily imply the right to direct its disposition after death, or the right to have it passed on to one's kindred by the operation of the intestate law. Any idea that the limitation of inheritance is socialistic, or destructive of the right of private property, should be banished from the mind, and the question how far rights of inheritance and bequest should extend, and how far they should be limited by inheritance taxes or otherwise, should be decided solely by considerations of social necessity and expediency.

3. Under the benefits theory of taxation the inheritance tax has been explained as a payment in return for the various services rendered by the state. Eschenbach pictures the state as a silent partner in the business of each citizen, without whose aid and protection it would be impossible to transact business or to accumulate wealth; when the partnership is dissolved by death, the silent partner, the state, is entitled to a share of the capital. Stated in this form, the argument seems rather fanciful; but in its essence it is simply a statement of the intimate relations which exist between the individual and the state, and of the manifold useful offices performed by government, which may be conceived to give the state a better claim to the property of a decedent than can be advanced by any individual who was of no assistance to the owner in acquiring it. This argument will not justify graduation according to relationship. It will result in progressive, proportional or regressive rates, according to the view which may be taken of the relative importance of governmental action to the rich and to the poor. The argument is in reality not so much a justification of any particular kind of tax as of taxation in general.

4. The inheritance tax is sometimes considered as a payment, not for the benefits of government in general, but for a particular service connected with the institution of inheritance or bequest. It is argued that since these privileges are conferred by positive law, those who benefit by them owe something to the state in return for the legal regulations which give them the right to the property of another after his

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death, for the proceedings necessary to put them in possession, and for the protection of the property in the meantime, when it would be especially liable to unlawful depredation. Leroy-Beaulieu compares the tax to an insurance premium, but the analogy is not perfect, for it is not the function of government to make good losses, but to prevent them.

This theory will justify graduation according to relationship, since there is some degree of probability that property might be transmitted in the direct line in a given case even if there were no laws of inheritance; the state may therefore be said to render a greater service when property goes to distant relatives, or strangers in blood, than when it is simply handed down from father to son. Other things being equal, the value of the service to the individual is in proportion to the value of the property received; but the absolute amount which ought to be paid in accordance with this theory would be difficult to determine. In the case of a distant relative it would be nearly the whole amount of the inheritance, because there is very little probability that a distant relative would obtain the property without the aid of the state.

5. The cost-of-service theory considers the expense of the governmental action rather than its value to the individual. It is no more than fair that the cost of probate courts should be defrayed, in large part at least, by those who receive the chief benefits from them. This argument has been neglected by writers on the subject, but its influence may be plainly seen in the legislation of several American commonwealths, notably New Hampshire, Minnesota, Wisconsin and Illinois, where light inheritance taxes have been imposed for the express purpose of defraying the expenses of probate courts. A tax levied according to cost of service should be regressive, or perhaps even the same for estates of all values; it should be moderate in amount, and should not discriminate between different degrees of relationship. As a matter of fact, the taxes in the commonwealths mentioned above have never been more than one per cent, and in most cases considerably less; and in Wisconsin the rates were slightly regressive.

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6. Leaving the services of government out of consideration, the inheritance tax may be regarded as a payment of the taxes evaded by property-owners during their lives. Graduation according to relationship cannot be justified from this point of view, because the tax is regarded as being paid by the decedent and not by the heir. Progression is a logical outcome of this theory, for since large fortunes escape their just share of taxation more easily than small ones, a progressive inheritance tax will operate to produce a rough sort of justice between rich and poor. Considered solely with reference to justice between individuals, the back-taxes theory is not very satisfactory, because the inheritance tax bears no necessary relation to the amount of taxes evaded in individual cases, unless there is a tax which is so universally and uniformly evaded as to be practically a dead letter. In such a case the back-taxes theory shades into the one which follows.

7. The tax may better be regarded as in lieu not of taxes which have been evaded, but of taxes which were not imposed; that is, as a property tax, or as Bastable suggests, a capitalized income tax, paid once in a generation instead of once a year. It is paid after the death of the tax-payer, and hence at the time most convenient for him; or it may be regarded as being paid by the heir in advance. The burden of annual taxes may be expected to be lightened when an inheritance tax is introduced, and hence the latter is not an additional burden, but only a method of levying part of the property or income tax. This appears clearly when the inheritance tax is not made applicable to all property, but only to those particular forms of property which it is not practicable to tax in any other way — which can be found and assessed only when passing through the probate court. According to this theory the tax must not be graduated according to relationship, because it simply takes the place of another tax which is not so graduated. Whether the rates should be proportional or progressive will depend upon the general tax policy of the government.

A consideration which has been strongly urged in favor of the inheritance tax in Germany is that, when levied in con-

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junction with the income tax, its effect will be to increase the burden on income from property as compared with income from labor. This is a characteristic of the property tax also; indeed, from this point of view the inheritance tax is regarded as a variety of the property tax.

8. The accidental-income argument rests upon the fortuitous nature of acquisitions by inheritance and bequest. They are sudden and perhaps unexpected accretions of property without labor on the part of the heir, and manifestly increase his ability to pay taxes. Theoretically, his annual property tax will be increased by the possession of this added wealth, but in the case of personal property this cannot be depended upon. It is conceivable that where there is an income tax, inheritances might be taxed as income; but on account of their accidental or gratuitous nature it seems more just to subject them to a distinct tax greater in amount than the income tax, or in addition to the property tax. It is not true in every case, however, that the inheritance of property indicates a real increase of tax-paying ability. As Adam Smith clearly pointed out, the death of the head of a family may be a positive economic loss to the wife and children who lived in the same house with him, enjoyed the use of his property during his life and were dependent upon his personal exertions for their support. But if his income was from property instead of labor, his death will make little difference in the family income. If the income was wholly from interest, the economic condition of the family will be somewhat improved, for the income will remain the same, and the necessary expenditure will be diminished by the death of one member. The extraordinary expenditure incident to the burial will probably be more than covered by the life insurance. If the income was from profits, the family income may be either increased or diminished, according to the changes in the employment of the capital which may be made as a result of the owner's death. But in any case where property goes to collateral relatives, or even to self-supporting adult children, there is a distinct increase of tax-paying ability; and the more distant the relationship, the

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more truly may the acquisition be said to be accidental. This consideration logically results in graduation according to relationship, the widow and minor children either being exempt altogether or exempt on a moderate amount and lightly taxed on the remainder. Adult sons and daughters may well be taxed somewhat more heavily. Progression may be justified by the accidental-income argument, since according to the theory of value, the final utility of a given decrement or tax decreases as the amount of the inheritance increases. The principle of ability indicates that when the tax is regarded as being paid by the heirs and not by the decedent, the exemptions (and if the rates are progressive, the progression also) should be controlled by the size of the separate shares rather than by that of the whole estate. It is clear that the size of the estate as a whole makes little difference to the individual heirs except as it affects the size of their several portions. By the application of this principle in the case of direct inheritances, the effect of the size of the family upon faculty can be practically recognized, as it probably can be in no other form of taxation.

The amount of property acquired by inheritance and bequest cannot be said to be a perfect criterion of faculty, and hence the inheritance tax would not be defensible as the sole mode of taxation; but there is no one perfect criterion of faculty, and the inheritance tax is useful as one mode of getting at the ability of tax-payers. On the whole, the accidental-income theory is perhaps the most satisfactory explanation of inheritance taxes as they actually exist.

It remains to consider what is commonly known as the theory of state co-heirship. Bluntschli, in proposing heavy inheritance taxes graduated according to relationship, and the abolition of inheritance and bequest between persons not descended from the same great-grandparents, conceived the state and local political units as co-heirs with individuals. The expression has been adopted by many German writers, and by Professor Ely in America. Some of the Germans are so fond of the term that they apply the name *staatliches Miterbrecht* to

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any theory of the limitation of inheritance. Thus Krüger cites Bentham as the chief representative of the theory of state co-heirship, although Bentham himself made no use of that expression. His plan was to abolish intestate inheritance except between immediate relatives, to restrict the power of bequest of testators having no direct heirs, and to give the state a part of the property of decedents in certain cases. He called the system which he proposed an extension of escheat, and based it not upon any right of inheritance in the state, but upon the absence of any reason for the operation of intestate inheritance between individuals not closely related. It is therefore a mistake to call Bentham a representative of the theory of state co-heirship. But later writers have combined with his argument the thought which lies at the basis of the partnership argument, and have urged that the state should inherit property from individuals because of what it does for them during their lives. The state is sometimes represented as a larger family; according to Umpfenbach, the bond of kinship between distant relatives loses itself in the whole nation, which therefore inherits the property of individuals as the family inherits the property of its members. Such expressions as these, however, must be regarded as metaphorical rather than scientific. The state may acquire property by escheat, but not by inheritance. Inheritance implies kinship, and the modern state is not a genetic association. The representation of the state as co-heir is either a mere figure of speech (and as such it is as old as Pliny) or else it results from a confusion of inheritance and escheat. Inheritance is not a matter of public law; it is for private law to prescribe how far inheritance shall be permitted between individuals, and for public law to ordain that where inheritance ends escheat shall begin.

The courts have frequently attempted to define the nature of inheritance taxes, but their deliverances on the subject do not agree. The United States Supreme Court decided that a tax which Louisiana formerly levied on foreign heirs was an exercise of the state's power of regulating inheritance and bequest. As a matter of fact, the law appeared on the statute-

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book under the title "Successions," as well as under "Revenue." The inheritance taxes levied by the general government during the Civil War manifestly could not be explained as a regulation of inheritance; they were sustained as an exercise of the taxing power. The inheritance tax is sometimes regarded as a tax on the property itself, but the better and more prevalent view is that the subject of the tax is the devolution of the property, or the privilege of acquiring property by inheritance or bequest. Inheritance tax laws have been declared unconstitutional for particular reasons in Minnesota and Wisconsin, and in New Hampshire this mode of taxation was declared to be unequal and unjust. New Hampshire is the only state in which it has been held to be unconstitutional for reasons which apply to inheritance taxes in general; and it has often been declared not to conflict with the requirements of equality and uniformity.

At the present time the most important practical problem connected with the inheritance tax is the question of progression. The introduction of progressive rates has been considered within a few months by the legislatures of at least four or five commonwealths, and there is good reason to think that the progressive principle may soon be introduced in America. The experience of other countries shows that progressive inheritance taxes are eminently practicable; they are also quite defensible in theory. The arguments for progressive taxation in general apply with full force, sometimes with added force, to the inheritance tax.[1] Considered in its relation to the theory of value, the question of progression in the inheritance tax is simply a part of the question of progressive taxation in general. The same may be said of progression regarded as a compensation for the inequalities of fortune produced by governmental action. The special compensatory theory, which regards progression in particular taxes as counterbalancing regression in other taxes, applies with special force to the inheritance tax considered as a composition for evaded taxes. Progression is a

[1] For a statement of the various arguments, see Seligman, "The Theory of Progressive Taxation," POLITICAL SCIENCE QUARTERLY, VIII, 220 (June, 1893).

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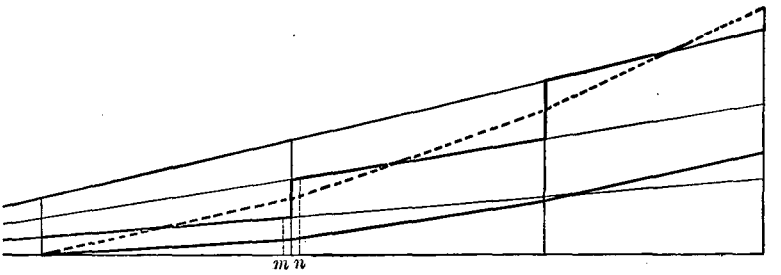
necessary element in the diffusion-of-wealth and back-taxes theories of the inheritance tax, and viewed from the standpoint of the other theories the principles are much the same as in the consideration of taxation in general; and since progression in general has a sound basis in theory and the inheritance tax has been found to be a practicable medium for the introduction of the principle, there is every reason to welcome the development in this direction.

Equity requires that the exempt amount should be deducted from the value of inheritances which are taxed, and the tax levied only on the excess; and that where the rates are progressive, the higher rates should not apply to the whole amount, but only to the excess over the next lower class in each case. Otherwise the tax will result in great inequalities, its effect in some cases being to make a larger inheritance actually less than a smaller one. It is contrary to all justice to



exempt an inheritance of $9,950, for example, and to levy a tax of $100 on one fifty dollars larger, as is done in New York; or to take a tax of one per cent, or $99.50, in the first case, and one of two per cent on the whole amount, or $200, in the second case. The inequality of such a tax may be made to appear very clearly by a graphical representation. In the accompanying diagram any given distance on the horizontal line, measured from the point at which the oblique lines meet it, represents the amount of an inheritance, and the perpendiculars erected at various points on that line represent the amount of the tax on an inheritance of the given amount. The oblique lines show the general effect of taxes levied at different

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rates. The irregular heavy line represents a progressive tax in which each rate applies to the whole amount, while the lower heavy line represents a tax levied at the same percentages, but in which each rate applies only to the excess over the next lower class, and in which the exempt amount is deducted in every case. When *mn* is less than the difference between the two perpendiculars, the difference between the two taxes is absolutely greater than the difference between the two inheritances. The temptation to under-valuation in such a case will be irresistible. The only disadvantage of the mode of progression represented by the lower line, as compared with the other, is that, the rates remaining the same, the revenue will be less; but the same revenue can be obtained by simply increasing the rates, as indicated by the dotted line. This same reasoning applies to all progressive taxes, and to all taxes from which small amounts are exempt; but it applies with special force to the inheritance tax, because, the exemption being usually greater and the rates being often higher, the difference between the two kinds of progression is greater, and the inequality of the first kind is more marked. Hence it is not surprising that non-deduction of the exempt amount, which in the property tax is passed over in silence, should call forth protests when applied to the inheritance tax. Some of the strongest arguments which were advanced against particular inheritance tax laws in the discussions of last winter and spring were in reality arguments only against this very defect. This was the case in the Boston *Herald's* attack upon the Massachusetts law, and in the opposition of the Minneapolis Board of Trade to a proposed law in Minnesota. In Pennsylvania the proposal to introduce progressive rates, though it was vehemently denounced as socialistic, still excited scarcely more opposition than the proposal to exempt estates of less than $50,000 without deducting that amount from the larger estates. The question is therefore one of great practical importance, although its theoretical solution is very simple.

Interstate complications have given rise to some perplexing questions in connection with the inheritance tax as well as

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with other forms of taxation. In theory, the inheritance tax leaves room for more such difficulties than any other tax, because the domicile or citizenship of both decedent and heir, and even of the executors and administrators, may be taken into consideration, as well as the location of the property; but the American practice is to consider only the domicile of the decedent and the situation of the property, so the problem is much the same as in the case of the property tax. Where real estate is concerned, the courts have ruled that the tax may be levied only where the property is situated; but personal property may be taxed either where it is situated or at the decedent's domicile. A few commonwealths levy the tax both on all property within the state and on the personal property of resident decedents, wherever situated; but the majority avoid double taxation by taxing only property within the state, of whatever kind. This seems to be the best solution of the problem which can be reached without interstate agreement.

In some countries the inheritance tax is accompanied by a tax on gifts *inter vivos*, partly for the purpose of preventing evasion; but in America it has been found sufficient for this purpose to make the inheritance tax applicable to gifts made to take effect at death. Some European countries also levy special taxes on the property of corporations, in lieu of the inheritance taxes paid by individuals. It may perhaps be considered that the immortality conferred upon corporations is analogous to the privilege of inheritance, and justifies a similar tax; but such taxes probably result rather from regarding the inheritance tax as a tax on property, which should therefore be paid on all property, whether it changes hands or not. But justice does not require a special tax on corporations in lieu of the inheritance tax, because the stock and bonds of business corporations become subject to the inheritance tax on the death of their owners, while most other corporations, such as benevolent, scientific and religious societies, are often as a matter of public policy exempted even from the inheritance tax on property bequeathed to them.

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It has frequently been proposed to set aside the proceeds of the inheritance tax for benevolent or educational purposes. Such proposals probably result from regarding the tax as a social rather than a purely fiscal measure. Bluntschli's suggestions have influenced the legislation of several Swiss cantons in this regard, and similar provisions have sometimes been made in the laws of other countries. It is interesting to note that the *vicesima hereditatium*, the earliest inheritance tax of which we have any definite knowledge, was established by Augustus for the purpose of pensioning the veterans of the Roman army; while some of the most recently established inheritance taxes, in Ontario, Nova Scotia and California, are for charitable and educational purposes. The progressive direct inheritance tax recently proposed in Pennsylvania was originally intended to create a state charity fund.

The classical objection to the inheritance tax, urged by Adam Smith and Ricardo, is that it is a tax on capital. This objection has also been applied to the property tax; but the inheritance tax is perhaps more likely to be paid out of capital than an annual property tax. It has been pointed out, however, by Mill, and more recently by Leroy-Beaulieu, that whether a tax will be paid out of capital or out of income depends not so much upon the mode of taxation as upon the amount of the tax and the time allowed for payment. And even if the tax is paid out of capital in a given case, it does not follow that there will be any diminution of the national capital. Over against the objection that the tax will be paid out of capital there are two counter arguments: first, that being levied only when the tax payer has just received a mass of property, it is easily and conveniently paid; and second, that by diminishing large fortunes it tends to bring about a more equitable distribution of wealth. This second argument will of course apply only when the tax is progressive, or when small amounts are exempt.

Adam Smith also charged the inheritance tax with violating his canon of equality, "the frequency of transference not being always equal in property of equal value." It has been suggested that this cause of inequality will operate in the long run

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between families, because of hereditary differences in longevity. This objection can be sustained only by regarding the inheritance tax as a property tax paid once in a lifetime. If the tax is considered as a limitation of inheritance, or as a fee, or as a tax resting upon the increased tax-paying ability of the heir, there is no inequality in exacting it as often as the devolution occurs. The tax may be paid at unequal intervals, but it is paid each time by a different person, and as a result of a new transfer. In the case of collateral inheritance it obviously makes little difference to the heir whether the property has changed owners within a few months or remained in the same hands for half a century. Where the property remains in the same family and may be regarded as belonging to the family in common, it is true that a frequently recurring inheritance tax might prove oppressive; yet this is an argument rather for the exemption or light taxation of direct heirs than for any discrimination according to the intervals at which the devolutions occur. However, it is sometimes attempted to avoid the supposed inequality by exempting the second devolution of the same property within a given period. The Chilean law makes the period ten years; in Italy it is only four months. As another way out of the difficulty, Leroy-Beaulieu commends the English method of reckoning the succession duty according to the successor's expectation of life; but this results in a heavier taxation of minors than of adults, which in the case of direct heirs, at least, is contrary to the principle of faculty. It is better to consider the time since the last devolution rather than the probable interval before the next one.

The objection of double taxation, which is sometimes urged against the inheritance tax, also rests upon the assumption that it is of the same nature as the property tax. Even granting the premise, the objection is little more than a play upon words. Double taxation, in the proper sense of the term, implies inequality of taxation ; and it is not unequal or double taxation to tax property both at regular intervals and also whenever its owner dies, unless one or the other of these forms of taxation is unequal of itself.

When the provisions of existing inheritance tax laws are

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considered, the absurdity of the cry that this is "a tax on widows and orphans" is easily perceived. In America, at least, whenever the tax applies to widows and orphans at all, the possibility of oppression is precluded by light rates and generous exemptions.

It is sometimes objected that the inheritance tax will drive away capital and discourage industry and thrift. These objections really apply less to the inheritance tax than to almost any other form of taxation. The deterrent effect of a tax to be paid only after death is not to be compared with that of a tax which must be paid every year. The inheritance tax is a less discouragement to industry than an income tax; it is a less discouragement to thrift than a property tax; and no tax which can be levied upon movable wealth will have less effect in driving away capital.

The inheritance tax has been denounced as confiscation, extortion and a dangerous step toward communism. This is declamation rather than argument, and it is a sufficient answer to point to the numerous theories by which the tax may be explained from the standpoint of pure finance. The inheritance tax is no more confiscation or extortion than any other tax; if it appears so, it is because it is unfamiliar, just as the introduction of a property tax where it is a novelty has sometimes been thought to be a step toward confiscation.

There is no valid objection to the inheritance tax as a part of the fiscal system. In practice it has been found to work well, being difficult to evade and yielding large amounts of revenue without injurious results. The experience of New York and other states shows that the inheritance tax and a system of corporation taxes could in most cases be made to pay all commonwealth expenses, leaving all taxes on property to the local political divisions.

The inheritance tax is found in nearly all the highly civilized countries of the world, but the laws vary greatly in their provisions.[1] Progressive rates are found only in the United

[1] For a description of these in some detail see my monograph, The Inheritance Tax. Columbia College Studies in History, Economics and Public Law, vol. iv, no. 2.

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Kingdom, Australasia, a few cantons of Switzerland and two provinces of Canada. In all these places the rates are also high, and the tax forms an important source of revenue. These facts seem to indicate that democratic countries are the principal home of highly developed inheritance taxes, though the United States has thus far been an exception to the rule. Here this form of taxation dates from 1826, when it was first introduced in Pennsylvania. It is now found in Maine, Massachusetts, Connecticut, New York, Pennsylvania, New Jersey, Delaware, Maryland, West Virginia, Tennessee, Ohio, Michigan and California. The rate for collateral relatives is in most cases five per cent, but in Maine, Maryland and West Virginia it is only two and one-half per cent, in Ohio three and one-half per cent, and in Delaware the tax now applies only to strangers in blood. New York and Michigan are the only commonwealths in which the tax applies to direct heirs; there they are taxed only on personal property, and the rate is only one per cent. There are approximately proportional probate fees in Cook County, Illinois, and in Vermont, amounting respectively to about one mill and two-fifths of a mill on the dollar, and Virginia has a similar fee which is called a tax. The inheritance tax has been rapidly increasing in importance in the past few years, and it is a significant fact that of the thirteen commonwealths in which it now exists four adopted it at the legislative sessions of 1893. Within the past twelve months, also, bills to introduce or extend the inheritance tax have failed of passage in Vermont, Nebraska, Wisconsin and Pennsylvania; the Nebraska bill proposed a radically progressive tax, and the Pennsylvania bill called for a progressive tax on direct heirs. In Minnesota the last legislature proposed a constitutional amendment permitting such a tax, in order to make sure of its legality. It is evident that the popularity of the inheritance tax is on the increase, and it seems not improbable that before many years this mode of taxation may be well nigh universal in America.

MAX WEST.

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THE MODERN SPIRIT IN PENOLOGY.

I.

THE most striking feature of our age is the ever-increasing consideration given to those elements which promote the progress of human civilization, and the well-being of society as well as that of every individual. It is due to this tendency that during the last ten or fifteen years a powerful movement has established itself for reforming and humanizing the old methods of dealing with crime.

In times when the psychological faculties and the self-consciousness of man were less developed than they are now, the barbarous treatment of prisoners was actually felt less by them than would now be the case ; and it is quite possible that the treatment of convicts to-day, comparatively lenient, humane and just as it is, is relatively more severe for them than was the case when the rack and other instruments of torture were in full swing. Increasing civilization has created innumerable means of comfort and enjoyment in order to make life as attractive as possible ; the mere restraint of a man's liberty, therefore, involving, as it does, compulsion, exclusion from society, denial of the customary enjoyments of life, and, in the case of individuals who still possess some moral consciousness, the feeling of repentance and shame, is and should be considered as a punishment of no little importance. Herbert Spencer says :

> All beyond what absolute morality countenances is as unnecessary, inexpedient and unjustifiable, as it is useless. The necessities of civilization require no gratuitous infliction of pain, no revengeful penalties. Complete life being the end of morality, and the conditions it insists on being such as to render this complete life possible to all members of a community, we cannot rightly abrogate these conditions, even in the person of a criminal, further than is needful to prevent greater abrogation of them. . . . Freedom to

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fulfil the laws of life being the thing insisted on, to the end that the sum of life may be the greatest possible, it follows that the life of the offender must be taken into account as an item in this sum, and that we must permit him to live as completely as consists with social safety. . . . It is commonly said that the criminal loses all his rights. This may be so according to law, but it is not so according to justice.

F. I. Monat, president of the Royal Statistical Society and formerly inspector-general of jails in Bengal, says :

Solitary confinement for various periods, deprivation of all sources of enjoyment, prolonged enforced silence and their gloomy accompaniments, aimless, dispiriting and exhausting tasks, have often produced their natural results in wrecking both mind and body. I doubt if they have exercised the smallest influence upon the habitually criminal classes in determent of crime. The reason of this appears to me to be simple and obvious. Pain is a sensation and has no immediate connection with a moral sentiment. Pain, again, is confined to the individual made to suffer it, and can scarcely be fully realized by other persons, even in the active manifestations. The mental and bodily torture of long continued solitary confinement, unrelieved by a ray of sunshine of humanity, is never seen by the outer world, and even if witnessed by others whom it is intended to deter, would have no active terrors, for it is a passive state. The painful scenes witnessed at public executions when the laws were savage in their severity and brutal in their exhibition, had no effect whatever in deterring from crime, and simply demoralized those who thronged to gloat over the sufferings of the victims of perverted justice. . . . In our Norfolk Island, the system of unrelenting severity in its most repulsive form succeeded in converting rational beings into unreasoning fiends, and failed so entirely to deter from the commission of the most appalling crimes, as to lead to its abandonment, as a scandal and reproach to humanity itself.

But there is another more immediate consideration to be taken into account : the formidable fact that in every civilized country, for a long number of years, crime has continually been on the increase, so that the criminal class is an ever-growing danger. France shows during the last half century an increase of crime of 133 per cent. A similar or even more

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deplorable picture is shown by every other country of the old continent. In England judicial statisticians wish us to believe that crime has diminished. But this is not the case; those who study and interpret criminal statistics without bias and who take fully into account all outward influences, do not share such an opinion. If a hundred men are sentenced at one period to ten years, and at another period, for exactly the same offences, to five years, a reduction of fifty per cent of the prison population is effected, but a diminution of crimes either in number or gravity can not necessarily be inferred. In fact, the diminished prison population in England is actually due to the infliction of shorter sentences in the application of the law. Again, the drafting off of youthful criminals to separate establishments through the recent acts of Parliament must also receive its due attention.

The general increase of crime leads the thoughtful mind to enquire whether or not the criminal code and its administration, the management of prisons and the treatment of the law-breaking classes fulfil the purpose for which they are designed. And this question seems to have become at last in every country a burning social problem. But, while Europe is still exhausting its intellectual power in unproductive theories, the experimental genius of the Americans shows us in the New York State Reformatory at Elmira the actual results of more than fifteen years of practical progress; and the most advanced scientific investigators of Europe do not hesitate to acknowledge that "Elmira" is the practical end to which their theories lead.

As regards the criminal statistics of America it is more difficult than elsewhere to come to a definite conclusion. Up to 1880 criminality had alarmingly increased, but in 1890 it showed a decided fall. The number of prisoners to a million of population was as follows:

1850	290
1860	607
1870	853
1880	1,169
1890	1,133

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This showing leaves ample room for speculation as to the extent to which the efficacious working of the rational reformatory system has influenced the results.

II.

In order to cope with the problem of crime all authorities on the subject agree that we have to know: What is crime? Who and what is the criminal? Why and in what does he differ from the normal individual? Dr. Anderson, detective commissioner of the London police, takes from the lips of a criminal these words:

> Yes, I am a criminal; but at whose door lies the real guilt of my crimes? I am just what the state has made me. I was innocent and happy once and a career of usefulness was open to me; but your infamous laws stepped in and dragged me back to the want and misery and vice from which kind friends rescued me. Those who are responsible for such laws ought now to be in the dock beside me!

Such are the words recorded by one whose position entitles him to be considered one of the greatest authorities on this question; and although many a man may feel inclined to treat them lightly, they certainly contain ample food for reflection, just as well as when a convict in a moment of reasonableness asks: "What am I to do, sir? I have never been taught anything but pocket-picking." Or when the superintendent of the educational department at the Elmira Reformatory, Professor James R. Monks, says to visitors: "Ask yourself where you would be, possibly, had you had no educational advantages; you appreciate the value of your early training and now, if not before, you grasp the meaning of what you see before you. . . ."

It is beyond doubt that the criminal is partly if not entirely produced by our social conditions — that society is far more responsible for the commission of crime than is generally acknowledged. And if this fact alone is kept in mind, one will soon find that the old basis of penal justice must undergo a thorough transformation before it can properly serve its

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purpose. But there are other considerations. Sir Edmund du Cane, director of English prisons, says :

An examination of the criminal population as a whole has led some skilled observers to express the opinion that in mental and bodily constitution prisoners are below the average of the population of which they form a part.

And elsewhere du Cane continues :

Crime may very well be compared with physical disease, and the mode of proceeding for repression of the one is in principle the same as for the other. The most effective mode is to remove its causes, which often have their origin in our social conditions, and more often in the absence or weakening of those moral restraints by means of which society is kept together. . . . Many of the criminals do not and possibly cannot comprehend their own position or realize their true self-interest as social and responsible beings, and their actions are but too frequently prompted by what appears to them the expediency of the moment.

Dr. Corre says :

There is something feline in the criminal; like the cat, he is indolent and capricious, yet ardent in the pursuits of an aim; the anti-social being knows only how to satisfy his impulsive instincts.

Dr. Wey, of the Elmira Reformatory, says :

It is a mistake to suppose that the criminal is naturally bright. Like the cunning of the fox, his smartness displays itself in furthering his schemes and in personal gratification and comfort. . . .

Dr. A. Krauss says :

Criminals are more astute than intelligent. But what is this astuteness? It is an instinct, an innate faculty, which does not depend on real intelligence and which is already found precociously perfected in children, in the lowest savages, in women and also in imbeciles. . . .

Rev. W. D. Morrison, chaplain at H. M. Wandsworth Prison, London, says in his admirable book, *Crime and its Causes:*

The criminals possess no power of sustained volition. . . . Often animated by good resolutions, often anxious to do what is right, often possessing a sense of moral responsibility, these unfortunate

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creatures plunge again and again into vice and crime. In some cases of this description the will is practically annihilated; in others it is under the dominion of momentary caprice; in others, again, it has no power of concentration or it is the victim of sudden hurricanes of feeling which drive everything before them. They experience real sentiments of remorse, but neither remorse nor penitence enables them to grapple with their evil star. The will is stricken with disease and the man is dashed hither and thither, a helpless wreck on the sea of life. Egoism, selfishness, a lack of consideration for the rights and feelings of others, are the dominant principles in the life of both. . . . The bulk are of a humbly developed mental organization. Whether we call this low state of mental development atavism or degeneracy, is to a large extent a matter of words; the fact of its widespread existence among criminals is the important point.

Professor Bain says:

We must suppose, what is probably true of the criminal class generally, a low retentiveness for good and evil, the analytic expression of imprudence, perhaps the most radically incurable of all natural defects.

These quotations from the most eminent authorities speak for themselves. It scarcely admits now of question that every truly criminal act proceeds from a person who is, temporarily or permanently, in a more or less abnormal condition, and Sir James Fitzjames Stephen is right when he says: "The whole tendency of the age is in the direction of regarding vice and crime rather as diseases, qualifying their unfortunate victim for a hospital, than as causes of just hatred and vindictive punishment."

Now, the law of England and, with scarcely any modification, that of every other country, declares distinctly that a criminal intention does not exist if it can be proved that the culprit at the time of perpetrating the deed was in a state of unconsciousness or mental derangement, so that he cannot justly be held responsible for his action. But the spirit of this clause is grossly ignored in the practice, for the simple reason that the conception of unconsciousness and mental derangement in a man — the state when he is deprived of his mental and

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moral responsibility — is still obstinately imperfect. It is not only the insanity as defined by special clauses which has to be considered, but all those elements and influences which compel the recognition of a temporarily or permanently defective state of mental and moral consciousness in the individual. Abnormal development of the physical, intellectual and psychological faculties; moral insensibility and instinctive inclination for the low, ungovernable impulses and passions, whether inherited or produced through external circumstances; as well as youthfulness, homelessness, illiteracy and various other elements which prompt to crime; — are the data which must be taken into account in the modern science of penology.

It is an established fact and needs no proof that no one will commit any wrong or criminal act who is perfectly conscious of what he is doing, who is the master of himself and his impure impulses and inclinations and is able to realize the consequences which must infallibly follow, who knows that restrictions and laws are absolutely necessary for the maintenance of public order, security and peace, and that the highest amount of well-being can only be obtained by a just and honest and law-abiding life. Anyone who commits a wrong act either has no true conception of happiness, or is his own slave — the unfortunate victim of his degenerate state.

That there exist certain forces which do or may permanently or temporarily incapacitate an individual from acting with full consciousness, and from being guided by reason to choose always the right way, is found recognized in the remarks of one of the London judges, who, when sentencing a woman a short time ago, said :

> You have become a person of so little moral sense that eventually you have become an instrument, and a willing instrument, in taking away the life of a woman whose only offence towards you was that she was married to a man upon whom you had set your unholy passion.

In spite of this recognition, which involves the most substantial, though perhaps involuntary, condemnation of the law, and especially of its interpretation and application in

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practice, this miserable creature was sentenced to death and hanged.

Another illustration may be added: One Sunday morning in the practical ethics class in the Elmira Reformatory, when the subject of discourse was the turning away from the old path, one of the inmates suddenly rose, showing great agitation, and exclaimed: "It is impossible! My father is a thief; my mother is a thief; I am a thief, and can never be anything else." If such a man, conscious of being on the wrong path, is incapable from one cause or another of choosing the right; if in an hour of reasonableness a ray of sunlight penetrates the darkness and enables him to see himself in his perverted nature, and to recognize the criminal causes and motives within — those elements, which seem to render it absolutely impossible for him to be guided by his conscience and intellect; does not this fact powerfully appeal to every human soul for the most careful consideration, if not for pity?

Dr. Virgilio states that in Italy thirty-two per cent of the criminal population have inherited criminal tendencies from their parents. The same proportion is certainly to be found in every other country. Other well-known facts are, that the mortality among criminals is from one-third to one-half higher than that among the rest of the community, and that, while at present ninety per cent of the population of England can read and write — leaving ten per cent to be wholly illiterate — in the English prisons no less than twenty-five per cent can neither read nor write and seventy-two per cent can only read, or read and write imperfectly. A great proportion of the criminal class is thus mentally, morally and physically unfitted to hold their own by honest means in the struggle of life. Statistics show everywhere that the bulk of the criminals are almost always without a trade; the only kind of work they can turn to is rude manual labor, and this is exactly the kind of work which they have not the requisite physical strength to perform. Almost all forms of degeneracy render a man more or less unsuited for the struggle of life; and of degenerate persons, one who has to earn his own livelihood is much more

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likely to become a criminal than one who has not. And how many of those who cannot get work or are unable to earn sufficient to lead a fairly human life, take to crime as an alternative!

Now, if a man is physically, mentally and morally unfitted for success in the world; if for one reason or another he does not possess the power to live honestly by his own exertions, although he might wish to do so; under what authority can we claim a right to throw him into prison — a course which in a great number of cases only makes a criminal out of him if he has not been one before?

In spite of the general feeling that a starving man has a certain right to his neighbor's bread, that necessity knows no law, and that it is better for a man to commit a small offence than to expose himself to death, there appears to be very little real compassion for one who is in want; on the contrary, there still survives palpably a certain spirit of legalism — that the crime lies not so much in the theft or other offense, as in the poverty of the offender, in his lack of ability to get on in the world with being detected in violating the law. Thousands of instances could be cited where the rich and intellectually gifted man without any conscience is practically allowed to do whatever he pleases with his unfortunate and less-enlightened and less-experienced victims. For him moral duty does not exist, but, being well acquainted with the law, his shrewdness enables him to protect himself against the justice it embodies. Such instances are decidedly dark spots in the progress of civilization, and upon society, the state, rests the obligation to use every effort to remove them. But how? If we are sometimes too weak or incapable to weigh the strong and powerful one in the infallible scale of justice, then we are in duty bound to be much more just and conscientious in weighing the weak and helpless.

But to be just, conscientious and humane, demands first of all that the spirit of revenge be abandoned, and that the enforcement of the criminal law be regarded as designed only for the protection of society and the prevention of further

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crime. "Judge as well as law-maker," says Professor von Liszt, "deal with crime — manslaughter and murder — as if they were dealing with goods; they are unconscious of the importance — they overlook the individual." To secure full recognition for the importance, the value and the sacredness of the individual, is the simple and only problem of modern sociology as well as of penology; and the widely prevalent notion that the crime should be punished, not the criminal, requires to be reformed, to be humanized and civilized.

III.

Just as we study the causes and consequences of a disease in a man in order to cure and remove it, so we must study the causes and consequences of criminality in the individual if we want to heal and remove it. The danger of contagion and other disastrous consequences is no less in case of crime, when left to itself, than in case of disease under the same circumstances. A madman or a person afflicted with a dangerous disease is prevented, for his own interests as well as the interests of the community, from freely moving about until he is restored to health; so the criminal, for his own interests as well as the interests of society, is prevented from moving freely about until he is cured from his criminal proclivity; and as in the first case so in the second, it is impossible to fix beforehand the date when the restoration to a normal condition will be effected. Therefore, no alternative seems to be left except that of sentences undefined in extent; that is to say, the sentence must be not for a certain period, but for a certain purpose, *i.e.*, until reformation is effected. It cannot be urged too emphatically that the question of the gravity of the offence — whether it is theft, embezzlement or murder, whether attempted or completed — is not what has to be dealt with, but the fact that an offence or irregularity of some kind, which threatens the safety and well-being of the community, has been committed; and this should sufficiently justify society in assuming the right to restrain the perpetrator until

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there appears no longer any fear of his repeating a criminal offence.

Fair-minded authorities in every country almost universally agree that reformation of the offender is the solution of the problem. But what is this reformation? Where must it begin, and where end? The process should begin at the commission of an act which warrants society in refusing to allow the perpetrator to move freely in public life; and should end when the subject is brought to such a condition in body, mind and soul as to justify the anticipation that he will in future lead the life of an honest, law-abiding, self-respecting and self-supporting citizen; or, as the excellent clause of the Fassett Law expresses it:

> When it appears to the said managers [referring to the Elmira Reformatory] that there is a reasonable probability that the prisoner will live and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society, then they shall issue to such prisoner an absolute release from imprisonment. But no other form of application for the release of any prisoner shall be entertained by the managers.

This is the sole and entire meaning of "reformation" — the sole and entire end to be sought by the state in coping with the problem of crime and in dealing with the criminal. As soon as the prisoner possesses those qualities which society claims from its members, the state has accomplished its aim and duty and its jurisdiction is at an end.

"As to the amount of punishment," says Sir Edmund du Cane, "the stereotyped custom of assigning the periods of five, seven, ten, fourteen, twenty-one years penal servitude — a custom, no doubt, derived from the days of actual transportation — it is difficult to justify and may even defeat the great object." And here Mr. Havelock Ellis in his excellent work, *The Criminal*, justly remarks: "If our judges, before pronouncing sentence, were first to determine the years to be awarded by a solemn casting of dice, the result might be as good as those reached by the not very dissimilar system now adopted." In the short duration of the trial the judge can scarcely form

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for himself a clear conception of the real nature of the offence, much less of the individual character of the offender and the relation of the one to the other. Nor can he, in spite of all the best intentions, say what kind of punishment or treatment will be most conducive to the reformation of the man and at the same time most advantageous to the community. The psychological and anthropological conditions of the individual are of such infinite variety, that no human being is capable of measuring pain and punishment in accurate proportion to the gravity of an offence. Instead of a fruitless search after the precise character and quantity of punishment to be assigned in each case, is it not better simply to draw the line by the single consideration, whether or not the individual is fit to live in society — whether he possesses those qualities which the community chooses to claim from its members. Until we seek out the causes and motives in each individual offence and apply strictly the principle that the offender shall not be liberated until these causes and motives are removed — until his bodily, mental and moral faculties are in such a condition as to be no longer dangerous to the well-being of the community, we shall never be able to approach the solution of the problem. By fixing at the outset the duration of the confinement, we run the risk of either turning the criminal loose upon society before he is cured, or detaining him after his cure has been effected. To make his release depend on the mere lapse of time must surely end in a wrong on one side or the other — a wrong to society or a wrong to the prisoner. Many who are to-day undergoing imprisonment for life or for long terms of years, to their own destruction and misery, to the misery and ruin of their families and at great cost to the state, might with safety be liberated, while on the other hand thousands and thousands are daily released, with the full knowledge that they will return at once to criminal pursuits.

It is a formidable fact that the prison population chiefly consists of recidivists. Germany's statistics, for instance, prove that eighty per cent of those who have once been in prison commit crime again, while scarcely any country in Europe

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shows a less gloomy record. "Every relapse of a released convict is a living condemnation of the prison," says Dr. Mittelstaedt, and it needs no comment. If a criminal is allowed to live in continual alternation of liberty and imprisonment; if sentences of week upon week, month upon month, year upon year have been imposed upon him without effecting the slightest degree of reformation and improvement — without any but a negative and destructive purpose; if such a miserable being is locked up ten, twenty, fifty or a hundred times, and each time released to the danger of the community; is this not proof enough that there is something radically wrong in the whole system? Speaking in the spirit of Dr. Anderson: Does the law, with all its agencies, appear anything but a mere farce? Millions of offenders are sent annually to prison; thousands of officials are required to feed, clothe, occupy and instruct this army of criminals, and millions of money are spent annually for their maintenance and safety, for judicial proceedings, officials, police, *etc.;* and if any one asks the pertinent question: For what practical purpose? With what visible result? he may wait in vain for an answer. When we shall have advanced so far as to have wholly extirpated the old vindictive spirit of punishment in theory and in practice, and to have recognized that the end, and the only end, of imprisonment is the protection of society, the prevention of crime and the reformation of the criminal, only then shall we realize how utterly the present system fails of its true end — how entirely destitute of any return are the trouble and expense to which the honest members of society are subjected.

If a convicted man is as little fitted for social life at the expiration of his sentence as he was at the commencement of it, his punishment has merely satisfied the feeling of public vengeance, but has fulfilled only a negative purpose, accomplished only a destructive work. The imprisonment of the offender can only be justified where it aims to prepare the prisoner for liberty, for that life which he has to live after his release. From civil life he is taken, to civil life he has to

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return. The ancient spirit of penology considers its duty fulfilled after the offender has been convicted and sentenced to imprisonment for such and such a length of time; but the modern spirit says that the duty of the penologist just commences with the imprisonment of the convict. The prison is the place where the improvement, renovation and reformation of the criminal in body, mind and soul has to be effected; its function is similar to that of the hospital, but wider in scope.

In no country of Europe is any attempt made to transform radically the character of the prisoner during the time of his imprisonment; nor even to change the course of life of the first offender or to decrease the criminal population. Prisons here are in fact institutions for the incubation of criminals, rather than for their reformation. This is acknowledged by every authority on the prison question. As Dr. Paul Aubrey says: "The prison is still the best school of crime we possess." Taking into account the vast number of relapsed criminals, and the many first offenders who, for lack of proper and timely treatment, become through no fault of their own the so-called irreclaimable criminals, it is hard to maintain that the prison with the old *régime* exercises any deterrent influence whatever. But not only do such places of confinement fail to serve any beneficial purpose, either to the community or to the prisoner; they even exercise systematically a demoralizing influence. The natural striving instinct in a man is blunted and extinguished, the prisoner thrown back into his low, primitive animal sphere and compelled to remain therein until the grave-digger mercifully finds room for him beneath the ground. One is fully justified in asking: Is there any reason for the further existence of such institutions in society? The treatment of the hardened criminal is too lenient and of the reclaimable offender too severe. No sickly sentimentality or demoralizing cruelty, no undue leniency or sympathy, no excessive philanthropy, but the desire to be just — this is what is wanted: justice, based on purely human feeling, on the ethics of our existence and the progress in civilization.

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IV.

A full understanding of the fundamental principles of the system in force in the Elmira Reformatory furnishes the key to this momentous problem; and the introduction of this system — the physical, intellectual and above all moral sanatarium for reclaimable convicts — into every civilized country cannot be too emphatically recommended. Whoever pays a visit on a Sunday morning to the class in practical ethics in the Elmira Reformatory and witnesses the serious faces and moistened eyes, the play of lights and shadows over the uplifted countenances of the inmates, with their quick apprehension of fine intellectual distinctions and solemn spiritual truths — "condemned felons everyone, yet men, whom I had learned to love," says Professor Collins, the late secretary of the educational department in Elmira — would no longer need to search for the quintessence of a rational reform of the old *régime*. This is the base upon which to operate; it speaks more of the soundness of the system pursued in Elmira than the fact statistically proved that over eighty per cent of the inmates are released as reformed and reclaimed human beings, and that a much higher percentage might be attained if the "indeterminate sentence" system were applied without restriction. The idea that the criminal cannot be improved and converted into an orderly, law-abiding and useful member of the community has no longer any foundation, since there is ample proof that means have been found to make the achievement of this end possible. In every human soul there is a spot which, if rationally cultivated and sown with good seed, could produce good fruits. The only difficulty lies in taking the trouble to find this spot; but, if we fully realize that the rational reformation of the criminal is only secondarily in his interests, but primarily in the interests of society, it certainly repays whatever trouble we take. The state, of course, does not owe a greater duty to the convict than to other individual members of the community, but reformation — the extirpation of the criminal germ by every available

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means — is the only way to diminish criminality and to afford society real protection.

General Superintendent Brockway would say that the three chief factors of reform, if arranged in order of importance and the degree of influence which they exercise on the man, would be education, conduct and work; for the schoolroom is alone qualified to bring an individual morally and intellectually to a full self-consciousness. This principle is the characteristic and most important feature of Brockway's system. Ignorance is, as statistics prove, one of the most formidable causes of crime. True practical education of mind and soul is a marvellous regenerative power, is the magic wand which converts criminals into honest, self-respecting and self-supporting men, is the only foundation of a sound moral character. Education in Elmira means ethical, intellectual and physical culture. The treatment, as individually as possible, consists on the physical side in awakening, strengthening and refining the flaccid muscular system and the blunted senses which are so common among criminals, and on the intellectual and moral side in accomplishing the prisoner's education, in curing his defective and undeveloped moral sense, in forming in him a sound and natural will power, in developing individuality and self-respect, in manufacturing character, establishing those virtues of which convicts are most in want and which are absolutely necessary for a man if he is to lead the life of an honest, self-supporting, law-abiding member of modern society. The educational system is directed more to producing right development rather than to furnishing with useful information. In the class for practical morality, commonly called the "ethical factory," for instance, the instructor takes up subjects connected with every-day life and treats them in their moral aspects. Such topics are discussed as these: "Is honesty the best policy?" "The ethics of politics." "The struggle for life." "Is war justifiable?" "The ethics of education." "The ethics of punishment." "Our first duty to humanity." "The abolition of poverty." "How does the competition in trade between the American and foreigner

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affect wages?" "In case of necessity is it better to beg or to steal?" "Our first duty." Here, the prisoner is encouraged to give free vent to his opinion and in fact the most earnest interest that can possibly be found in any class is excited amongst these prisoners.

Moret defined the criminal character as "a morbid deviation from the normal type of humanity;" and the restoration of such a nature from the morbid to the normal cannot be effected more radically and thoroughly than by such a system — by developing in the prisoner the elementary principles of morality, by bringing him under the dominion of the ideas, habits and motives that everywhere pervade and impel the community and which are ordinarily sufficient to restrain men from the commission of crime. Thus we have the general principle or practical rule of "reformation." The prison management has to assimilate the condition of the prisoner to that of the free man and to cultivate in him the same habits, appeal to the same motives, awaken the same ambitions, develop the same views of life, and subject him to the same temptations that belong to the free community of which he is to be fitted to become a member. To accomplish this end the prisoners in the Elmira Reformatory not only receive industrial training in trades — thirty-two different trades are now carried on for instruction as well as for production — but also wages, out of which they have to pay for their food, clothes, medical treatment, *etc.*, just as a workman in ordinary life receives his wages and pays for his subsistence. It is impossible to conceive of another system capable of thus assimilating the prisoner's condition to that of the common civilian and making the subject fitted for civil life.

One drawback apparently prevails in Elmira as in most other prisons, namely, that the productive power of the prisoners is not fully utilized. Dr. Monat says :

> It should not . . . be forgotten that the criminal, had he not taken to evil courses, would himself have competed with others of his own class or trade in the labor market. To teach him an industrial art that will enable him to gain an honest livelihood on

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release, is merely to restore him to his natural position; and surely it is an unmixed gain to society to convert by this means an unprofitable consumer into a profitable producer. We thereby create nothing new; we merely transform an instrument of evil into one of good.

The cost of maintenance of a convict is an unjust tax upon the community, and bears more heavily upon the honest laborer than his natural competition in the labor-market. Everyone who lives has to earn his living; and prisoners should be the very last to enjoy exemption from this rule. Every prisoner should maintain himself by useful work, and should not be allowed to live and die a debtor to the honest citizen. This law can be observed not only without injury to the individual, but with every advantage in helping to realize the ultimate end of reformation with the subject.

Obermaier in the Munich prison and Colonel Montesinos in Valencia prison introduced and carried on with their prisoners all kinds of industrial work; the result being that each prisoner by occupation and industry maintained himself. Dr. Monat also informs us that two of the Indian prisons, Alipore and Hooghly, were continuously self-supporting, while the prisoners in six other prisons earned more than the cost of their maintenance. The prisons at Ghent produce annually a clear income of £5,000. In Coldbath-Fields prison forty prisoners made each a net profit of £17. 4. 1½d per annum, working seven and a half hours per day.

The indeterminate system of sentences is applied in Elmira with some restriction. Its advantages, however, are obvious there. It practically places the release of the prisoner in his own hands; he has to work himself through until fit for liberation. While every assistance is afforded him to make progress, he has actually to strain his physical, intellectual and moral capacities to the very utmost in order to attain his goal. "The prisoners feel," as Brockway says, "at every moment the presence of pressing responsibilities; their best energy is called forth to make the day count for progress, for enlargement." At every step, at every look, at every

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thought, there is some rule or requirement calling for alertness, complete self-control and the fullest activity of the spiritual and physical man. The prisoners not only receive education, but special attention is paid to the occupation and continual direction of their mental and moral faculties throughout their waking hours, so that idleness or any temporary relaxation of mental tension appears to be impossible. The prisoner's desire for liberty, which is the foundation of the indeterminate sentence system, and which has nowhere else been utilized as a motive power for the renovation and reformation of offenders, embodies those elements which cause all progress in civilization — the very principles of the ethics of existence. And if we take away the natural stimulants of progress in a man, we also take away his living spirit and his moral will and power. To arouse and encourage the spiritless prisoner, and to foster in him hope and ambition until they become habitual, is the quintessence of the "indeterminate system" — the supreme art of a true reformatory prison management.

V.

The idea of the indeterminate sentence is not new; it was first announced by Frederick Hill, late inspector of prisons for Scotland, and has since been advocated in one shape or another by various authorities on the criminal question, though the system was first put into practice by Z. R. Brockway at Elmira. In the discussions of the European International Association for the Reform of the Criminal Law — founded through the energetic initiative of Professor von Liszt in 1889, and consisting now of more than six hundred members from twenty-five different countries — the indeterminate sentence has constituted from the beginning the cardinal question; but although a growing demand for its introduction has been set up by theorists all over Europe, the system has nowhere there been put into practice. A great step, however, towards reform in the right direction, is the "probation system," or conditional remission of punishment, adopted in various countries, as Austria, Belgium, France,

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England, Italy and the United States. According to this, the judge is authorized in case of a first offender to defer the execution of the sentence for a certain length of time; if the offender during this time does not fall again into the hands of justice, the penalty will ultimately be cancelled. In Austria the passage of the penal code referring to conditional release authorizes the judge, in cases which deserve special consideration, to defer, for a time varying at his discretion from one to three years, the execution of a sentence of imprisonment that does not exceed six months. This conditional release is not applicable to persons whose address cannot be identified, or who have already been convicted of crime or offence, or who are under police supervision. The Belgian law authorizes the suspension of execution in similar cases for a time not exceeding five years, with remission of the penalty in case of no new offence in that time, or, in the contrary case, with cumulation of penalties. The French code provides for a suspension for three years of a sentence to imprisonment for three months or less, with the same effects of good or bad conduct in the interval. A similar provision has been inserted in the new Italian penal code. In Germany, in spite of the fact that on the average seventy-eight per cent of all those convicted for crime or offence are sentenced to less than three months imprisonment, the suspension of punishment system has not yet been introduced, but, as Professor von Liszt says, "it can not be a question *whether*, but *how*, it is to be introduced into the German penal code."

These enactments for the suspension of punishment are dictated by the desire to keep a man out of prison as long as possible, in order to save him from social ruin, from the loss of his position in life, in short, from those conditions which threaten his very existence. But there is ample justification for the question: Of what use is it to open the prison door for a few weeks or a few months, when apparently the only result is to induce or oblige the offender to proceed with the commission of crime and to become a habitual criminal. This

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privilege benefits only a very small percentage of the law-breakers, and practically does not reach those who are afflicted with the real criminal tendency. Thus the actual criminal classes in Europe are still left entirely to themselves. No law aims to convert them into rational beings, or to prevent them from committing crime and leading the life of the habitual criminal, and no prison management is capable of overcoming the defects and negative forces of the law. How many of the most hardened of criminals would be well justified in saying: "Had I only been properly treated for my first offence, no doubt it would have saved me." If every offence were thoroughly treated in the first case, by far the greatest part of all habitual criminals would be saved. The beginning of actual criminal conduct is the point at which the law must strike, at which the cure of the offender has to begin; and unless he is brought under the care of men who have an intimate knowledge of civil life, and who take special interest in the cure of the subject, — more interest than is generally taken in return for the salaries paid, — it is vain to think of attaining the end in view; the subject will never be brought into that state which makes him fitted to face the world on equal terms with the normal individual.

The objection has been raised that a reform system such as is advocated above would involve too lenient a treatment of the criminals and might even prove an incentive to many to commit an offence in order to partake of the advantages afforded thereby. Such an argument is merely speculative and has no real foundation. In fact, for the criminal and criminally inclined classes there is no severer punishment than physical, mental and moral elevation — occupation which leads and forces them into a better and nobler sphere of life: they have a decided preference for the low. Rev. W. D. Morrison, with his many years' experience with prisoners, says:

The actual criminal class persists in the life they have adopted merely because it suits them best. One of the great difficulties in dealing with persons of this stamp is their hatred of a well-ordered

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existence; in a vast number of cases the life they live is the only kind of life they thoroughly enjoy. "Let us alone and mind your own business," is the secret sentiment and often the open avowal of most of these people. "We should be miserable living according to your ideas; let us live according to our own."

Crime, of course, will always remain inseparable from mankind; but there appears to be no doubt that the criminal classes can be broken up, that the number of law-breakers can be reduced, and that "systematic and organized crime" can be stamped out of society, if not within one, yet certainly within a few generations.

ALEXANDER WINTER.

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THE LATE CHILIAN CONTROVERSY.

I.

NEARLY two years have elapsed since the late controversy between the United States and Chili began, and it is a year and a half since it was ended. The incident may therefore be said to have become historical. In this light I propose to treat it. The discussions that appeared in the public prints when it was in an acute stage were based on telegraphic reports, which, while satisfying the demand for quick intelligence, can seldom present an accurate record of a prolonged transaction. It is my purpose to give a simple narration of the circumstances, chiefly as they are disclosed in the official publications of the United States.

In order to understand the controversy it is necessary to recur to a civil war in Chili, growing out of a dispute between two departments of the government, the executive and the legislative. This dispute reached an acute stage in October, 1890, when President Balmaceda, being unable to bring the Congress to satisfactory terms, closed an extraordinary session which he had called for the first of that month, appointed a ministry of his own partisans and prepared to rule without Congressional assistance. It had been expected that this extraordinary session would last till December, and when it was closed the appropriations had not been made for the ensuing year. When, therefore, the first of January came, the government was without a budget — a situation which the president had necessarily contemplated, and which he met by assuming to exercise dictatorial powers till the election of a new Congress in March, when he hoped to secure a majority of his own adherents. But early in January the leaders of the Congressional party proclaimed a revolution, in which they had the support of the larger part of the navy, under command of Jorge Montt, now President of Chili. Balmaceda retained control of the army. The government of the United States and other foreign

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governments employed their good offices to compose the strife, but in vain. On the 28th of August, 1891, the Congressionalists achieved at Placillas a complete triumph.

Meanwhile certain events had placed the United States in an exceptional relation to the contest. As Balmaceda lacked naval support, he instructed his minister in Washington to endeavor to purchase from the government a man-of-war; and in the latter part of April Mr. Egan, then minister of the United States in Chili, being urgently solicited to do so, communicated a request from the Chilian president that the overtures of the minister might be favorably considered. To this request, when first transmitted by telegraph, the government of the United States made no reply. In June, when a despatch was received from Mr. Egan repeating the substance of his telegram, answer was made that the Navy Department had no ships for sale. If the United States had had a fleet for sale, the result of the application could hardly have been different. Prior to this correspondence, the Chilian minister had applied to the Department of State to prevent certain insurgent agents from shipping to Chili arms and munitions of war. This presented a different question. It is one thing for a government to sell a ship-of-war to a belligerent; it is another thing to permit the shipment of arms and ammunition. The first would be considered an unneutral act; the second would not. Therefore Mr. Blaine properly answered that by the laws of the United States, which were understood to be in conformity with the law of nations, the traffic in arms and munitions of war was permitted, subject to the belligerent right of capture and condemnation.

In April, 1891, a Congressionalist transport called the *Itata* put in at San Diego, California, to arrange for taking on board a cargo of arms and munitions of war which had been purchased in the United States, and which was to be transferred to her from a schooner called the *Robert and Minnie* at a place to be appointed. This indirect way of securing possession of the cargo was not without reason — an observation equally applicable to the attempt of the *Itata* to conceal her identity as an insurgent transport; since she might, as an insurgent vessel,

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have been ordered out of the jurisdiction of the United States, though she had committed no act rendering her liable to judicial prosecution. But she was seized at San Diego on a judicial process, founded on an alleged violation of the neutrality laws of the United States. She succeeded, however, in communicating with the *Robert and Minnie*, and, while in the custody of an agent of the United States marshal, she steamed out of the harbor, met the schooner at San Clementi island, received the cargo of arms and ammunition and, after getting rid of the marshal's agent, sailed away to Chili under convoy of the insurgent man-of-war *Esmeralda*.

Immediately orders were given to the naval forces of the United States to pursue the *Itata* on the high seas as a fugitive from custody and seize her, and, if she was convoyed by a man-of-war, to take her by force if necessary. She succeeded, however, in reaching Iquique, when she was given up, together with the arms and ammunition, to the naval representatives of the United States, who brought her back to San Diego, where both the vessel and her cargo were libelled. The *Robert and Minnie* also was libelled and her crew imprisoned. A few weeks afterward the court discharged the schooner and her crew, holding that no offence had been committed. The *Itata* and her cargo were detained much longer; but the court ultimately held that the transaction was a legitimate commercial venture. An appeal was taken by the government, but the judgment has lately been affirmed by the circuit court of appeals for the ninth circuit. The Congressional leaders recognized the impropriety of the *Itata's* evasion of the custody of the court, and expressed regret for it. The feature of the case that seems to have been regarded by them as a hardship was the requirement to return the arms and ammunition, which they expressed an earnest desire to retain.

Two other incidents that appear to have created ill-feeling were the cutting of the cables of the Central and South American Telegraph Company and the visit of Admiral Brown to Quinteros Bay. The telegraph company, which is an American corporation, desired permission to erect a line from Valparaiso

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to Santiago, and on to the Argentine frontier, in order to compete with the Transandine Telegraph Company. Balmaceda, whose communication with the north was cut off, refused to make this concession unless the former company, whose lines were open from Callao to Iquique, the Congressionalist headquarters, would open direct communication between Callao and Valparaiso. This was done about the middle of July by the company's steamer *Relay*, which cut the cable off Iquique and joined it in the deep sea, outside the three-mile limit, with the line to Valparaiso, against the wishes of the Congressionalists and under the protection of the naval forces of the United States. The question of the neutralization of cables is one as yet to be adjusted. By the fifteenth article of the convention of March 14, 1884, to which the United States is a party, for the protection of cables outside of territorial waters, it is provided that "the stipulations of this convention shall in no wise affect the liberty of action of belligerents." In this relation it is to be observed that the Congressionalists had not been accorded belligerent rights by the United States, nor, so far as the correspondence discloses, by any other power except Bolivia. But they had been seeking such recognition, and the cutting and joining of the cables under the circumstances which have been narrated seems to have been regarded by them not only as a pointed denial of belligerency, but also as an act of favor to Balmaceda. It appears, however, that the naval protection afforded to the *Relay* was rendered pursuant to an order given by Admiral McCann under his general instructions as to the protection of American interests, and without special direction from the Navy Department.

The visit of Admiral Brown to Quinteros Bay took place on August 20, eight days before the close of the war. He states that on the morning of that day it was known in Valparaiso that the Congressionalists had landed a force of perhaps ten thousand men at the bay, and that it was expected that a battle would be fought there. Subsequently he proceeded thither in the *San Francisco*, but finding no indication of a battle returned to Valparaiso. On his return he sent an officer

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ashore with a telegram to the Navy Department, announcing that eight thousand Congressionalists had made a landing; but he states that this telegram was in cipher, so that no one knew of its purport. He also states that he cautioned the crew of the boat that went ashore against answering any questions, and that the officer brought back more information than existed on the *San Francisco*. While I accept without reservation Admiral Brown's account of this incident, there is evidence that the attacks upon him in the Chilian press were at least partly due to reports spread by Balmacedists, who do not appear to have been specially desirous to preserve the reputation of the United States as a neutral. In *The Nation* (New York) of October 8, 1891, there is a translation of a paragraph from the Balmacedist newspaper (all others having been suppressed) at Valparaiso, of August 21, publishing statements as to the landing of the Congressionalists, which were said to be based on "trustworthy news brought us by the (U. S.) war-ship *San Francisco*." The *Herald* correspondent refers, as a cause of ill-feeling toward the United States in Chili after the downfall of Balmaceda, to "lying official telegrams sent by Balmaceda's minister of foreign affairs, Aldernate."

Notwithstanding the incidents which have been narrated, the relations between the United States and the new government of Chili opened auspiciously. On September 1 Mr. Egan telegraphed that the Congressionalists were fully installed, and inquired whether he could "recognize the new government," adding: "Everything is tranquil." On September 4 he was instructed to recognize the government, if it was accepted by the people; and on the 7th he replied that he was "in cordial communication with the provisional government," and significantly added that it was "universally accepted by the people." On September 21 Mr. Egan telegraphed news of the suicide of Balmaceda, and repeated his former statement as to the prevailing tranquility. Similar reports were made by our naval officers. On September 9 Admiral Brown telegraphed from Valparaiso that, as the country was absolutely quiet, there was no necessity for his remaining. He left Sep-

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tember 14; and Captain Schley, who had then arrived in the *Baltimore*, subsequently reported a condition of tranquility, saying that the foreign fleets were withdrawing, that his presence at Valparaiso was not demanded, and that he considered it advisable to have some repairs made which could not be obtained in Chilian ports. This was on September 23. On the 24th Mr. Egan sent to Washington the following telegram :

> Mr. Egan states that all officials of the late government (including the ministers, senators, members of Congress and judges) would be prosecuted criminally. This has been resolved by the government. Seven ministers and twelve other refugees are in the legation. Intimation has been given Mr. Egan that he was expected to terminate the asylum and send the refugees out to be prosecuted. To do so would be to sacrifice their lives, and Mr. Egan has taken stand that he will permit them to go out of legation only under proper safe conduct to neutral territory. On account of *Itata* and other questions bitter feeling is being fomented by government supporters against Americans. Secret police surround the legation, with orders to arrest strangers visiting it. Two of Mr. Egan's servants had been arrested, and were now in prison. Against this disrespect to the legation Mr. Egan addressed a firm protest to the minister for foreign affairs.

Next day Captain Schley telegraphed to the secretary of the navy from Valparaiso that he had "just returned from Santiago"; that there was "strong feeling and great hostility among Chilians against American citizens"; and that "Mr. Egan had informed him that the authorities were giving him much annoyance on account of Balmacedists, who held prominent positions, taking refuge in the American legation." Captain Schley specified as the causes of hostile feeling the *Itata* case, the cutting of the cable, the visit of the *San Francisco* to Quinteros Bay, and a false telegraphic report that Balmaceda had escaped in the *San Francisco*. The false report to which Captain Schley refers was sent by Lieutenant Sturdy, an officer of the *Baltimore*, on September 14, the day the *San Francisco* left Valparaiso for Callao. From New York the report was telegraphed back to Chili, and it can scarcely

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be considered remarkable that, as Captain Schley afterward stated, it "caused much excitement and strong feeling against American citizens." Lieutenant Sturdy was suspended from duty, and his telegraphic correspondence was stopped.

II.

We now stand at the threshold of the Chilian controversy. The incidents which have heretofore attracted our attention had not been made the subject of international contention, though, with the exception of the report as to Balmaceda's flight, they all occurred prior to the formation of the new government, and immediately after the downfall of Balmaceda they became topics of animadversion in the press. But when the report came that the authorities were reflecting the popular ill-feeling by treating the legation of the United States with disrespect, the scene was suddenly and completely transformed. The question became international, and the possibility of a conflict was suggested. Captain Schley was ordered to remain at Valparaiso, and to make such necessary repairs as could be effected on board ship.

On September 25 Mr. Egan telegraphed that during the two preceding days twenty persons, some of whom were Americans, had been arrested for entering the legation, and that others had been prevented from entering by warning of the police. On the following day instructions were telegraphed to Mr. Egan, by direction of the president, "to insist firmly that the respect and inviolability due to the minister of the United States and to the legation buildings, including free access, shall be given and observed, fully and promptly, by the Chilian authorities," that the government of the United States would consider in a friendly spirit whether asylum had properly been granted, when the facts were more fully before it, but that it could "not allow to pass without a firm protest the evidence of disrespect towards its minister which Mr. Egan reported." On the same day Mr. Egan was also instructed by telegraph "to promptly and fully inform the department of all the facts." Mr. Egan's response to these telegrams was dated September

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27, and was received the next day. He stated that arrests had ceased but that espionage by the police was still kept up; that the minister for foreign affairs charged that the refugees had abused the right of asylum, and on that ground defended the action of the government; that he had informed the minister that the charge was absolutely and entirely unfounded, and had asked for safe conduct for the refugees; that similar requests were made by him two weeks before, informally, but that orders were given that all persons leaving the legation should be arrested, and that many were thus obliged to procure passports to visit the legation. The rest of the telegram was as follows:

The names of the refugees and the offences charged (none of them being charged with common crimes), are as follows: Gana, responsibility as the commander-in-chief of the army and as minister and senator; Ibañez, Mackenna, Cruzat, Valdez Carrera, Mackenna, as ministers and senators; Ricardo Vicuña and Ovalle, senators; Cotapas, member of congress; Camus and Pinto Agüero, officers of the army; two sons of Cotapos and Pinto Agüero, no office. Spanish minister has asked for safe conduct for five persons in his legation. Safe conduct was immediately granted to two officers of the army who entered English legation. Refugees are also in German and other legations. Process commenced after asylum was granted, and minister of foreign affairs fully recognized the correctness of Mr. Egan's action. The rights and dignity of the legation, Mr. Egan says, he shall firmly maintain.

On September 30 Mr. Egan telegraphed that the minister for foreign affairs refused to grant the refugees safe conduct or permission to leave the country, besides maintaining the correctness of all that had been done by the authorities, and repeating "the unfounded and absurd charges of the refugees conspiring in the United States legation." This telegram was received October 1. On the same day Mr. Wharton, Acting Secretary of State, telegraphed to Mr. Egan as follows:

Mr. Egan is informed that the president desires to establish and maintain the most friendly relations with Chili, but the right of asylum having been tacitly, if not expressly, allowed to other lega-

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tions, and having been exercised by our own minister with the old government in the interest and for the safety of the adherents of the party now in power, the president cannot but regard the application of another rule, accompanied by acts of disrespect to our legation, as the manifestation of a most unfriendly spirit. Mr. Egan is instructed to furnish a copy of this to the minister for foreign affairs and to take the utmost precaution to prevent any abuse of the privilege of asylum by those to whom he had extended it; their intercourse with outside persons, whether by person or by letter, should be under his supervision and limited to the most necessary and innocent matters. The discussion and adjustment of the matter would probably be much facilitated were there an authorized agent of Chili at Washington.

Issue has now been joined. Mr. Wharton's telegram discloses that the impression of unfriendliness was based on the supposition (1) that what was denied to the legation of the United States was allowed to other legations; (2) that the denial was attended with a manifestation of disrespect toward that legation. These allegations, as it seems to me, were directly responsive (1) to the association of the policing of the legation with the fomentation of bitter feeling by supporters of the government against Americans on account of the *Itata* and other questions; (2) to the apparent freedom of other legations from annoyance, though they were reported also to be sheltering refugees; (3) to the fact that the Spanish minister had asked for safe-conducts, apparently without unpleasant results, while the informal requests of the American minister had been followed by the issuance of orders to arrest persons leaving the legation; (4) to the statement that safe conduct had immediately been granted to two persons who entered the English legation.

On October 6 Mr. Wharton renewed his telegraphic inquiries as to the refugees in other legations and the conduct of the government in regard to them. Mr. Egan replied on the 8th, and his telegram, though long, I give in full:

Mr. Egan acknowledges receipt of Mr. Wharton's telegram of the 6th instant, and states that eighty persons sought refuge in his legation after the overthrow of the Balmaceda government; about the

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same number in the Spanish legation, eight in the Brazilian, five in the French, several in the Uruguayan, two in the German and one in the English. Balmaceda sought refuge in the Argentine. All these have gone out except fifteen in his own legation, one in the German and five in the Spanish. From the 23d to 25th September, when the arrests were made at his legation, several arrests were also made of visitors to the Spanish legation. No protest, however, was made, owing to the fact that the new minister, having recently arrived, had not then been officially received. The other legations were not molested. Spanish minister is seeking safe conduct for refugees in his legation, and will act in entire harmony with Mr. Egan. All acts of the late government since the first of January last, including the election and proceedings of Congress, have been decreed by the present government unconstitutional, and the refugees are charged with crime in having acted without constitutional authority in their several positions. The refugee in the English legation, having promised to go home and remain there, has been permitted to go. Others have been allowed out on bonds to submit themselves to the tribunal. Those in the Spanish and United States legations would be subjected to heavy penalties, and in some cases death. No one has been granted a safe-conduct to leave the country. The press of Buenos Ayres and Montevideo contain extremely strong articles against the attitude of the government towards the supporters of Balmaceda. Mr. Egan's note of the 1st instant has not yet been replied to by the minister for foreign affairs.

This telegram seems entirely to remove the grounds that previously seemed to exist for the supposition that the Chilian authorities were acting in an exceptional manner toward the United States and their minister. The charge of partiality toward the British legation is corrected by the statement that no one had been granted safe conduct. The Spanish legation was treated precisely as was that of the United States. The freedom of other legations from molestation is explained by the statement that all the refugees, except one in the German, had gone out. Further light is thrown on this feature of the case by dispatches received in Washington in November.

The decree for the institution of proceedings against officials of the Balmaceda government was issued September 14, but the policing of the American and Spanish legations did not

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begin till the 23d. In a despatch of September 29 Mr. Egan says that "the Brazilian legation had several refugees, some of whom were liberated under bond, and others, for whom the government refused safe conduct, sought concealment elsewhere, as did also some refugees who were in the French legation." The form of this statement indicates that the departure of those refugees was not recent, and doubtless some of them were referred to in a dispatch of October 17, in which it is stated that "when the first excitement settled down," many of those who entered the various legations after the battle of Placillas went out, "some of those who had but slight responsibility giving bond to appear before the tribunals when required, and others seeking concealment in the houses of the supporters of the successful party." The only person, a Colonel Mason, who took refuge in the British legation was, it is stated, "immediately allowed to go to his house under promise that he would remain there, but was not given safe conduct out of the country." From the despatch of September 29 we learn also that the refugee in the German legation was a prominent Balmacedist, General Velasquez, ex-minister of war, but it is stated that, encouraged by the German minister, he proposed to give himself up as soon as he recovered from the effects of an accident from which he was suffering. The only refugee in the Argentine legation, Balmaceda, committed suicide September 19.

After October 1 both the American and the Spanish legation incurred annoyances. On one occasion some of the detectives got drunk, knocked at the windows and used insulting language to the refugees, whom they had seen in an apartment facing the street. The police, observing the disorder, abated it, and Señor Matta, the minister for foreign affairs, said that such misconduct would not find in his department "support or excuse." After the middle of December the espionage was for a time increased. At the Spanish embassy detectives sat on the door-steps, and various persons, among others the ex-President of Ecuador, while leaving it were arrested. On December 19 Mr. Egan's son, who was an employee of

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the American legation, was stopped by a detective on the street, but was liberated when recognized by the police. As Mr. Egan had then suspended communication with the foreign office, because of an offensive circular issued by Señor Matta, he sent for the Argentine minister and through his good offices obtained a promise that the detectives would be withdrawn, leaving only the policemen in uniform.

The limits of this review do not admit of an extended discussion of diplomatic asylum; a full exposition of that subject may be found in previous numbers of the POLITICAL SCIENCE QUARTERLY.[1] The general view of the government of the United States, as expressed through a long series of years, is well stated in the printed *Personal Instructions to Ministers*, in which the following rule is laid down:

> In some countries, where frequent insurrections occur and consequent instability of government exists, the practice of extraterritorial asylum has become so firmly established, that it is often invoked by unsuccessful insurgents, and is practically recognized by the local government to the extent even of respecting the premises of a consulate in which such fugitives may take refuge. This government does not sanction the usage, and enjoins upon its representatives in such countries the avoidance of all pretexts for its exercise. While indisposed to direct its agents to deny temporary shelter to any person whose life may be threatened by mob violence, it deems it proper to instruct its representatives that it will not countenance them in any attempt to knowingly harbor offenders against the laws from the pursuit of the legitimate agents of justice.[2]

These instructions have apparently never been revoked or modified; and it may here be noticed that in a case that arose in Chili in 1851, Mr. Webster, then Secretary of State, whose opinions are always entitled to deference, instructed our minister in that country that if the government objected to his sheltering a particular refugee, he must advise such refugee that shelter could no longer be afforded.

In this relation it is proper to say that there does not appear to be any ground for charging Mr. Egan with partiality in his

[1] Volume vii, pages 1, 197, 397 (March, June, September, 1892).
[2] Wharton's Int. Law Dig. § 104.

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assertion of the right to grant asylum in Chili. While Balmaceda was in power, he sheltered two prominent Congressionalists, and when it was made known to him that the government was contemplating a search of his domicile, he informed the foreign office that he would himself shoot the first man who attempted to enter for that purpose. Fortunately, the government desisted from its design. On more than one occasion a refugee has been taken from a diplomatic residence — it was done even in Madrid as early as 1726 — but no violent resistance has been offered; nor does it seem possible that under circumstances such as these a public minister would be justified in killing the authorized agent of the government to which he is accredited. The question is a public one, and the government is responsible if it does any wrong. Mr. Seward once instructed our minister to Hayti that "in all cases the exercise of the right [of asylum] should be attended as far as possible with delicacy toward the state concerned, and with forbearance from all appearance of arrogance and dictation."

The Chilian minister for foreign affairs, did not, however, deny the right to grant asylum. On the contrary, he declared that such a right was a logical consequence of the extra-territoriality of a minister's domicile — that is to say, its absolute exemption from the action of the local government; and, therefore, he neither offered nor threatened to take the refugees by force. I think this view is palpably unsound and dangerous. If it be sound, the right of asylum as certainly exists at Washington as at Santiago. The government of the United States cannot accept such a doctrine. But, while Mr. Egan and Señor Matta agreed on this question of theory, they differed widely as to its consequences (1) as to the right to police the domicile, and (2) as to the right to demand safe conduct for the refugees. These questions I have fully treated elsewhere.[1] The policing of a minister's domicile, when it is used as an asylum for refugees, is a measure of such ancient origin that it may be said that the memory of man runneth not to the contrary. It is recognized as a legitimate measure, and

[1] POLITICAL SCIENCE QUARTERLY, VII, 228–231 (June, 1892).

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has constantly been enforced in this hemisphere. Nor can safe-conducts be demanded as of right. Señor Matta, after vigorously defending, against the protests of Mr. Egan, the right of the police authorities to act outside the legation without reference to the foreign minister's dictation, and insisting that safe conduct was granted only as of courtesy, not as of right, closed the correspondence on the 23d of October, declaring that it was "useless to continue an exchange of notes which could only lead to a sterile discussion."

On September 24 there were nineteen refugees in the legation. On September 29 the number had been reduced to fifteen. Before the 17th of October one of these went out on bond. In a despatch of December 4 Mr. Egan stated that the government still hoped to induce the United States to surrender for punishment the refugees then in the legation, and the punishment in one case at least, that of General Gana, would, he was assured, be very severe. On January 9, 1892, he escorted two refugees to Valparaiso and put them on board the United States man-of-war *Yorktown*. On the 13th he and the Spanish and Italian ministers disposed of five refugees from the American legation and two from the Spanish in the same manner. These were all that remained. What had become of the rest does not appear, though the correspondent of the *Herald*, in a dispatch from Valparaiso of January 13, stated that one of the nine who were in the legation apparently at the opening of the year, had determined to stay in Chili "and fight his case out in the courts." To the last the government refused to grant safe-conducts, and the refugees were transported on the *Yorktown* to Callao. With the departure of the refugees, the police were removed from about the American and Spanish legations. It does not appear that any one of the refugees who remained in Chili was put to death.

Besides those in the *Yorktown*, many refugees were carried away on other United States men-of-war. The English ships refused to receive any. Mr. Egan states that there were none on the French ships, which lay far from the shore. The Balmacedist president-elect, Vicuña, and Admiral Viel were

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received on the German man-of-war *Leipzig*. On September 4 the *Baltimore* sailed for Peru with nineteen refugees, of whom a part had been sheltered by her and the rest by the *San Francisco*. The *San Francisco* received other refugees prior to her departure from Valparaiso on September 14, when, as Admiral Brown has said, "both at Santiago and Valparaiso perfect order existed." When he arrived at Callao on the 20th he wrote that he had brought two "prominent" refugees, but their names were not given. The *Herald* correspondent, on September 24, telegraphed from Lima that the two "mysterious refugees" were Señor Ovalle Vicuña and Colonel Vidaurre, members of a Balmacedist military court — Vidaurre being president of it — which, on the 19th of August, condemned to death forty-two young men, whose ages ranged from sixteen to eighteen years, on a charge of conspiracy. The *Herald* correspondent states that they were "massacred and their bodies subjected to frightful indignities." Mr. Egan, whose account may be more accurate as to details, states that they were youths of the highest standing, who had gone out from Santiago to form a band of *monteneros*, or guerillas; that they were surprised and thirteen or fifteen of them shot, and that eight were taken prisoners; that the latter, "many of them boys of fifteen to twenty years of age," were on the following morning "shot in cold blood and under circumstances of great barbarity."

I have given both accounts; they differ only as to details. The savage act they describe was not an act of civilized warfare. I cannot vouch for the identification of the "mysterious refugees." If it was inaccurate, it might well have been formally contradicted, for the report justly provoked indignation in Chili. Lord Palmerston once said that a British ship-of-war had always been considered a safe place of refuge for persons fleeing "from persecution on account of their political conduct or opinions," whether the refugee was "escaping from threats of a monarchical government or from the lawless violence of a revolutionary committee." Whoever may have been the refugees on the *San Francisco*, such was

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not their situation. The country was "absolutely quiet," and the government, though provisional, had been recognized by the United States and other foreign governments, and was "universally accepted by the people." Its jurisdiction over the inhabitants was not to be questioned. On October 4 the *Herald* correspondent telegraphed from Valparaiso that the expected return of the *San Francisco* was regarded in Chili "with undisguised disfavor." Admiral Brown himself telegraphed from Callao on the 11th of that month that, "taking into consideration the strong feeling in Chili against the American squadron," he doubted "if an increased naval force at Valparaiso would improve the state of affairs." That the extensive deportation of refugees by our men-of-war partly accounted for that feeling, is obvious, and this fact is specially important since the suspicions and resentments, however groundless they were, arising from antecedent causes, were in the popular mind confirmed and greatly intensified.

III.

On October 16 Captain Schley, who, since the controversy as to the refugees in Santiago arose, had remained at Valparaiso in the *Baltimore*, gave a hundred and seventeen of his men liberty. As his action has been criticised, it should be stated that on October 12 he telegraphed to the Navy Department that ill-feeling was less manifest and everything quiet. About six o'clock in the evening of the 16th, two of the men became involved in an altercation with a Chilian, and were mobbed. Their names were Riggin and Talbot, and I will summarize the latter's account of the affair as given at Mare Island, in the United States, Riggin having been killed. When they landed they got their money changed, and went to the eastern end of the town, where they entered a saloon. After remaining there about fifteen minutes they went to another saloon, where they stayed about ten minutes. After leaving the second saloon they strolled along the street for probably an hour, when, with two of their mates, they took a cab for the western part of the city, where Talbot and Riggin entered a dance-hall

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and saloon called "The Shakespeare." The proprietor told them that he was going to close up, and that they would have to go out, as a crowd of disbanded sailors and soldiers, the roughs of the town, intended to "tackle" them, and he did not want any trouble in his saloon. (Another of the men states that the saloon was closed; that the proprietor said he had heard there was going to be trouble, and that he was not going to have a row in his place, since he had "paid two or three fines for that kind of doings before.") Talbot did not pay much attention to what the proprietor said, and laughed at it; but he and Riggin left and went to a dance-hall called "The Home of the Free." Passing it by, however, they entered, about half-past three, an adjoining saloon called "The True Blue," on the Calle de Arsenal, where they found four of their shipmates. Talbot first states that he and Riggin remained there "maybe an hour"; later, he says about twenty or twenty-five minutes, or half an hour. But he did not have a watch, and he states that his conjectures as to time were "just guessing." He and Riggin started, however, to leave "The True Blue," with a view to go to the other end of the town, that in which they then were being, as Talbot states, "the lowest part of the city," and they wanted "to get up town to a better quarter." Riggin went out first. Talbot remained to speak to some one, he thinks the woman at the bar, and when he reached the door he saw Riggin in the middle of the street "talking to a Chilian man-of-warsman." The Chilian "seemed to be putting himself up as though he was getting ready to fight." Talbot ran across the street and "asked Riggin what was the matter." He forgot what Riggin told him, but "he said something about the Chilian trying to pick a row with him, or something like that." Talbot got between Riggin and the Chilian, and seizing them pushed them aside, and told the Chilian to "go off" or "shove off." The Chilian spat in his face, and Talbot knocked him down. Talbot claims to have been perfectly sober. At the beginning of the altercation he did not see any one in the street except those immediately implicated. A moment later the street

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was filled with Chilian roughs. Talbot and Riggin, compelled to flee, ran down the Calle de Arsenal — "We ran the wrong way," says Talbot; "if we had run the other way, we would have been all right" — and sought refuge in a street car. The mob, who picked up cobblestones as they ran, smashed the car, and after a few minutes Talbot and Riggin abandoned it. They were at once surrounded by the mob, some of whom had knives. Some American sailors in the vicinity ran to succor their companions. Riggin was first stabbed, and then shot. Talbot was stabbed, but escaped. Another American sailor was killed, and eighteen others stabbed or beaten. Only one Chilian was wounded. The riot lasted nearly an hour. The overwhelming numbers of the Chilians, as well as the character of the injuries inflicted on the Americans, are conclusive as to the fact that, whatever the attitude of the parties to the original disturbance may have been, the American sailors were ultimately compelled to act on the defensive, and were ruthlessly and brutally pursued and attacked by the mob.

A board of investigation on the *Baltimore*, on October 19, found that the riot was attributable to bitter feeling on the part of the mob toward the American sailors, as shown by acts and expressions, and to a desire to rob them, several cases of such robbery having occurred; that there was not a single attack, but several; that, the police not interfering, the worst of the assault lasted about an hour, and that the police maltreated some of the American sailors. In regard to the death of Riggin, the board found that he and Talbot were drinking in "The True Blue" with a Chilian sailor, when a dispute arose and the Chilian spat in his face; that Talbot knocked him down, and that during the fight a mob of sailors and civilians rushed in upon them; that Talbot and Riggin forced their way out, and took refuge in a street car, which they were compelled to leave; that while an American seaman named Johnson was carrying Riggin, who had then been stabbed several times, to an apothecary's, a squad of police came charging up the street with fixed

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bayonets, and when at close quarters fired at Johnson; whose face was blackened by the discharge from one of the pieces, while a second shot passed through Johnson's clothing and killed Riggin. The board also found that the sailors from the *Baltimore* were unarmed, and that, as seen on the street by their officers at various times in the afternoon, they were strolling about in a quiet and orderly manner, saluting all officers, American and foreign, especially Chilian; that most of the sailors in the mob were men recently discharged from the Chilian fleet, and that in one case Chilian men-of-warsmen assisted one of the American sailors against the mob.

On January 8 Señor Montt, the Chilian minister in Washington, stated that the prosecuting attorney of Valparaiso, after an examination of the testimony given by the witnesses before the criminal court of that city, was of opinion that the riot originated in a broil between drunken sailors and assumed extensive proportions owing to the character of the quarter in which it took place, which was inhabited by disreputable people and abounded in places for the sale of liquor; that the police, as shown by the testimony of all the witnesses, except two of the sailors from the *Baltimore*, did their duty; that the shot that killed Riggin was fired from a revolver, and could not have been fired by the police, who used carbines. Señor Montt also stated that the prosecuting attorney had brought accusations against Carlos Gomez, Federico Rodriguez and Ahumada, Chilians, and Davidson, an American, who appeared to be guilty, and had asked that the legal penalties be imposed upon them as follows: Gomez, three to five years' penal imprisonment; Rodriguez, from two to eighteen months, and Ahumada and Davidson, twenty to forty days' imprisonment. In the *Herald* of February 9 there appeared under date of the preceding day the following telegram from Valparaiso:

Judge of Crimes Foster to-day passed sentence in the long pending and much discussed *Baltimore* assault case of October 16, 1891. His sentence is subject to review by the Court of Appeals. The document covers 180 pages and goes all over again the evidence against

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the accused and compares it closely with the evidence presented by the prisoners. The finding of the court is as follows: Carlos Arena, alias Gomez, sentenced to 540 days' imprisonment for wounding William Turnbull, the coal heaver of the *Baltimore*, who died of his injuries; 300 days for public disorder, 60 days for carrying a knife and 20 days for giving an assumed name. This makes a total of 920 days. José Ahumada, sentenced to 320 days' imprisonment for injuring Turnbull. Federico Rodriguez, sentenced to 140 days' imprisonment for wounding boatswain's mate Charles W. Riggin, another of the murdered American seamen, for public disorder and for carrying a knife. It is held by Judge Foster that the evidence does not show that Rodriguez killed Riggin. On the contrary it is claimed that Riggin's death was caused by a shot which was fired by some unknown person. Gomez and Rodriguez, under the Chilian penal code, must pay the families of Turnbull and Riggin damages. These damages are recoverable by civil suit.

In three very remarkable cases within its own borders the government of the United States has been required to consider the question of the responsibility of a government for mob violence, and it has maintained the general and settled principle that a government is not assumed to be responsible for sudden tumults and their consequences, unless it is bound to render special protection. In the riot at New Orleans, August 21, 1851, a lawless assemblage of persons, acting in resentment of the rumored execution by the Spanish authorities of some of the participants in a military expedition set on foot in that city against the island of Cuba, attacked the Spanish consulate, destroyed the furniture, threw the archives into the street, defaced the portrait of the Queen of Spain, and tore into pieces the Spanish flag which they found in the office. The consul fled for his safety. Property of private subjects of Spain was also destroyed. On November 13, 1851, Mr. Webster, then Secretary of State, writing to the Spanish minister, expressed deep regret for the outrage, but denied that the government was bound to indemnify private persons. He acknowledged a special liability in regard to the consul, and promised that, if he should return to his post, he would be received and treated with courtesy, and with a national salute to the flag if he

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should arrive in a Spanish vessel. Referring to this subject in his annual message to Congress, President Fillmore said:

> As in war, the bearers of flags of truce are sacred, or else wars would be interminable; so in peace, embassadors, public ministers and consuls, charged with friendly national intercourse, are objects of especial respect and protection, each according to the rights belonging to his rank and station.

An indemnity was subsequently paid for the damage done at the consulate, as well as to the property of Spanish subjects; but in the latter case it was paid as a gratuity.

On the 2nd of September, 1885, twenty-eight unoffending Chinese were driven from their homes and massacred at Rock Springs, in the Territory of Wyoming, their dwellings burned, their property destroyed, fifteen of their companions beaten and wounded, while for twelve hours the local authorities stood by in all the supineness of warm approval. The "judicial proceedings" that followed have been described as a burlesque; the Chinese minister said that with his imperfect knowledge of American procedure, he preferred not to discuss them. No attempt was made to punish the guilty. Mr. Bayard, then Secretary of State, writing to the Chinese minister on February 18, 1886, expressed indignant regret at the outrage, but denied the liability of the government to make indemnity. He stated, however, that in view of the shocking character of the outrage and the shameful failure of justice, the president would recommend the subject to the benevolent consideration of Congress, with the distinct understanding that a precedent was not to be created. Congress appropriated, and the government of the United States subsequently paid, an indemnity, which was declared to be an act of humanity and not of obligation.

On the morning of March 14, 1891, eleven persons in the custody of the law at New Orleans, five of whom had not been tried, while three had been acquitted and three were to be tried again, were slaughtered by a mob in the parish prison in that city. On the following day Mr. Blaine, Secretary of State, telegraphed to the governor of Louisiana that it had been represented by the Italian minister that among the victims of

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the deplorable massacre that had taken place there were three or more Italian subjects; that the treaty with Italy guaranteed to such subjects "the most constant protection and security for their persons and property"; that the president deeply regretted that the citizens of New Orleans should have so disparaged the purity and adequacy of their own tribunals as to transfer to the passionate judgment of a mob a question which should have been judged dispassionately and by settled rules of law; and that it was the hope of the president that the governor would co-operate with him in maintaining the obligations of the United States toward the Italian subjects who might be within the perils of the prevailing excitement, that further bloodshed and violence might be prevented, and that all offenders against the law might be promptly brought to justice. A copy of this telegram was communicated to Baron Fava, the Italian minister. The Italian government, however, urgently insisted on a promise of reparation, and failing to obtain it, withdrew its minister. When informing the government of the United States of his proposed departure, Baron Fava defined the demands of Italy as follows:

> The reparation demanded by the government of the King . . ., was to consist of the following points: (1) The official assurance by the federal government that the guilty parties should be brought to justice; (2) the recognition, in principle, that an indemnity is due to the relations of the victims.

In a note of April 1, 1891, to the Marquis Imperiali, who became *chargé d'affaires* on the departure of Baron Fava, Mr. Blaine, referring to those demands, stated that while the government of the United States had recognized the principle of indemnity to any Italian subjects who might have been wronged by a violation of the treaty, it would not, in a matter of such gravity, "permit itself to be unduly hurried," nor "make answer to any demand until every fact essential to a correct judgment shall have been fully ascertained through legal authority." Mr. Blaine added with great force that while the impatience of the aggrieved might be natural, its indulgence did not always secure the most substantial justice. The Italian

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government having interpreted Mr. Blaine's language as containing an admission that indemnity was due, Mr. Blaine, in a note to the Marquis Imperiali of April 14, corrected that impression, and stated that the question whether the treaty had been violated was one upon which the president, with sufficient facts before him, had taken full time for decision. After an examination of the facts and of the law applicable to the case, Mr. Blaine concluded his note as follows:

> If, therefore, it should appear that among those killed by the mob at New Orleans there were some Italian subjects who were resident or domiciled in that city, agreeably to our treaty with Italy and not in violation of our immigration laws, and who were abiding in the peace of the United States and obeying the laws thereof and of the state of Louisiana, and that the public officers charged with the duty of protecting life and property in that city connived at the work of the mob, or, upon proper notice or information of the threatened danger, failed to take any steps for the preservation of the public peace and afterwards to bring the guilty to trial, the president would, under such circumstances, feel that a case was established that should be submitted to the consideration of Congress with a view to the relief of the families of the Italian subjects who had lost their lives by lawless violence.

Whether the special liability that rests upon a government in respect to ministers and consuls, or that which may well be held to exist in respect to persons in the custody of the law, may under certain circumstances be applicable to sailors from a man-of-war, it is, perhaps, unnecessary to consider. If a minister or a consul, forgetful of his rank and station, should seek diversion in dangerous places frequented by lawless characters, it is hardly probable that the right to special protection as an official would follow him. It is commonly stated in the books that a man-of-war enters a foreign port with the implied consent of the local government. Her entrance is so described because, being a representative of the armed force of another government, she cannot claim to enter as of right. When her crew go ashore they are subject to the local law. They are also entitled to its protection. No respectable government will look on with unconcern when

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either its uniform or its citizenship is made the ground of unprovoked aggression on the part of a mob. No friendly government will refuse to punish and to disavow such an aggression committed within its jurisdiction on the sailors or the citizens of another power. The question whether that aggression has been committed is a proper one for legal investigation, and the question of responsibility depends upon the facts and the law applicable to them. The consideration of the responsibility of Chili for the acts of the mob at Valparaiso was at once diverted from the usual course by a turn in the diplomatic correspondence.

On the twenty-third of October — the day on which the correspondence as to refugees was closed at Santiago in mutual irritation — instructions were telegraphed to Mr. Egan to represent to the Chilian government that, although the attack on the American sailors took place on the 16th instant, no expression of regret, or of a purpose to make searching inquiry with a view to the institution of proper proceedings for the punishment of the guilty parties, had, so far as the United States was advised, been offered. Mr. Egan was also directed to bring to the attention of the foreign office the account of the riot as reported by Captain Schley after the investigation on the *Baltimore*, and to inquire whether there were any qualifying facts in the possession of the Chilian government, or any explanation to be offered of an event that had very deeply pained the people of the United States, not only by reason of the killing and pitiless wounding of their sailors, but even more as an apparent expression of unfriendliness toward the United States, which might put in peril the maintenance of amicable relations between the two countries.

Mr. Egan executed these instructions on October 26, and Señor Matta replied on the following day. His response was an angry and passionate one, and is not to be defended. He referred to the communication to which he was replying as expressing conclusions, formulating demands and advancing threats, which, without being cast back with acrimony, were not acceptable, and said that until the time came to make

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known the result of the judicial proceedings he could not admit that the silence of his department should appear as an expression of unfriendliness toward the government of the United States which might put in peril the maintenance of amicable relations between the two countries. The government of the United States, deeming the note offensive, did not reply to it.

Señor Matta also stated in his note that while he did not protest against the investigation held on the *Baltimore*, he would abide by the jurisdiction of the authorities of his own country, which were the only ones that possessed the right and power to punish the guilty in the territory of Chili; that since the date of the riot the authorities of Valparaiso, administrative and judicial, had, as was known to the commander of the *Baltimore*, been engaged in ascertaining who were to be blamed and who were to be punished for the very deplorable but not yet determined or adjudged occurrence that took place on the 16th instant; that the judicial investigation of the facts, which in Chilian practice was called *sumario*, was secret up to a certain point, and that until the time came to make it public his department did not possess and could not transmit the knowledge of the guilt or the guilty which might result from that investigation; but that as soon as the investigation should be concluded he would bring its result to the knowledge of the minister of the United States.

In regard to the proceeding called *sumario* in the Spanish law, it is proper to explain that while it is tedious and often protracted, all the evidence being carefully reduced to writing, it is analogous to our proceeding by grand jury, and like the latter, is strictly secret, only sworn officers and witnesses usually being admitted. When the note of Señor Matta was written, only ten days had elapsed since the riot, and if the principles of law he stated had been properly presented, they doubtless would have received respectful consideration.

When the president's annual message to Congress on its assembling in December, and the report of the secretary of the navy, both containing statements in regard to questions pending with Chili, became known in Santiago, Señor Matta

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sent to the Chilian minister in Washington, and at the same time officially published, a circular in which, while denying in detail the accuracy of these statements, he declared that they were based on erroneous information or were deliberately incorrect, and that in regard to the affair of the *Baltimore* there was "no exactness nor sincerity in what was said at Washington." Such language requires no characterization. After the publication of this circular, Mr. Egan suspended intercourse with the foreign office.

On January 1 a new ministry was announced. Mr. Egan telegraphed that two of its members were his personal friends; that he had excellent relations with them all, and that conciliation would mark their disposition toward the United States; that at least two of the cabinet had openly disapproved the Matta circular, that it was strongly condemned by public opinion and that it would not, as he thought, be difficult to have its terms disavowed or the circular itself withdrawn. He further stated that he thought "all the questions, safe conduct for refugees, assault on the *Baltimore* men, and disrespect to the legation," would be completely settled; and he reopened communication with the foreign office. On January 4 Señor Montt communicated to Mr. Blaine the text of the following telegraphic instructions:

> Inform the United States government that a summary of the attorney-general's report relative to the occurrences of October 16, which Chili has lamented and does so sincerely lament, will be sent on Monday, the 4th instant.

In communicating the summary on January 8, Señor Montt said:

> I have also received special instructions to state to the government of the United States that the government of Chili has felt very sincere regret for the unfortunate events which occurred in Valparaiso on the 16th of October. Although incidents of this nature are not rare in ports frequented by sailors of various nationalities, the fact that deaths and wounds were caused in the disturbance of the 16th of October, the zeal with which the Chilian authorities are accustomed to watch over the personal security of all who tread its territory, the

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fact that persons employed in the service of a friendly nation were concerned, and the frank desire for American cordiality which my government entertains, have led it cordially to deplore the aforesaid disturbance and to do anything in its power toward the trial and punishment of the guilty parties.

IV.

The final chapter in the Chilian controversy may be briefly told. The last refugee left the legation January 13. On January 16 Mr. Blaine instructed Mr. Egan to urge upon the Chilian government the prompt withdrawal, freely and in suitable terms, of everything in the Matta circular of a discourteous character. On January 21 Mr. Egan, whose recall had on the preceding day been requested on the ground that he was not *persona grata*, reported that he had had an interview with Señor Pereira, the new minister for foreign affairs, on the 18th instant, and that the latter had promised to consult with his colleagues as to the withdrawal of the circular and to make answer in another interview specially appointed, but that the interview had not taken place. A telegram was then sent to Mr. Egan, demanding of the Chilian government "a suitable apology" and "some adequate reparation" for the attack on the sailors of the *Baltimore*, and the public withdrawal of the Matta circular with a suitable apology, on pain of severance of diplomatic relations. In regard to the request for Mr. Egan's recall, it was stated that it would be time to consider that suggestion after a reply to the demands of the United States had been received, since it would then be known whether any correspondence could be maintained with the government of Chili on terms of mutual respect. This telegram Mr. Egan communicated to the foreign office with a note of January 22. On the 25th President Harrison transmitted all the correspondence to Congress, with a message reviewing the questions it presents. Maintaining that in regard to all of them the attitude of Chili had been unfriendly, he stated that communications in regard to the case of the *Baltimore*, which he held to be an unprovoked, if not premedi-

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tated, attack on the uniform of the United States, had not in any degree taken the form of a satisfactory expression of regret, much less of apology. In this relation he referred to the very full and emphatic expressions of Mr. Webster in the case of the New Orleans riot of 1851, and he also expressed the opinion that if the demands of the United States were not complied with, they should be enforced.

On the same day Mr. Egan telegraphed Señor Pereira's very extended response to his note of the 22d. It was received by the president on the 26th and was communicated to Congress on the 28th, with the statement that it was so conciliatory and friendly that in his opinion there was a good prospect that the differences between the two governments growing out of the case of the *Baltimore* could be adjusted on satisfactory terms by the usual methods and without special powers from Congress. Señor Pereira withdrew with appropriate expressions the Matta circular. He made further expressions of regret for the killing and wounding of the sailors of the *Baltimore*, and offered, if the United States insisted on it, to forego the termination of the judicial proceedings and submit the question of reparation to the Supreme Court of the United States. In regard to the request for the change in the *personnel* of the legation of the United States in Santiago, he said that his government would "take no positive step without the accord of the government of the United States." Responding on January 30 to the communication of Señor Pereira, Mr. Blaine instructed Mr. Egan to assure the Chilian government that the president would "be glad to meet in the most generous spirit" the "friendly overtures" of the Chilian government.

In July, 1892, the Chilian government placed at the disposal of the United States the sum of seventy-five thousand dollars in American gold, requesting that it might be distributed among the seamen who were wounded in the riot and the families of the two who were killed. With the reception of this sum, the incident lost its controversial aspect.

JOHN BASSETT MOORE.

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THE PRUSSIAN ARCHIVES.

I.

THE record offices or depositories of archives in Prussia, as in other countries, are central and local. The central office is located at Berlin, the local offices are in the cities. Of the provinces each, with the exception of Brandenburg, has one or more of these depositories. Brandenburg has none, because its records have always formed a part of the collection belonging to the Prussian state. Since the beginning of the present century the collections in all the provinces have been brought under the control of the central bureau, and thus, from an administrative point of view, they form a part of the national archives. This course has not been followed in the case of the cities.

For centuries the memorials and documents belonging to the Margraves of Brandenburg were moved from place to place as the residence of the prince changed. In the time of the first Hohenzollern it is probable that they were deposited at Tangermünde. During the fifteenth century they were brought to the city of Brandenburg, and finally, after the collection had increased considerably in amount and value, they found a permanent abiding place at the capital of the principality on the Spree. The margraves of the sixteenth and seventeenth centuries took an increasing interest in the collection. Joachim II began special efforts to enrich it. In the last year of the sixteenth century Erasmus Langenhain was appointed to take charge of it, and from that time it received something like systematic administration. The Great Elector devoted much personal attention to its development, and since 1700 the central administrative bureaus have, with the exception of the *General-Directorium* created by Frederick William I, regularly deposited their papers in the archives of the state. Frederick William I provided rooms where the archives were preserved until they were removed to the old electoral palace in *Klosterstrasse*, where they are now kept.

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Till the *General-Directorium* was abolished in 1808, its papers — which concerned administration in the departments of war, finance and public domains — were kept apart from the regular state collection (*Geheime-Staats-Archiv*). The latter then included the documents which related to the history of the royal house, matters which were discussed or decided in the privy council of the king, royal ordinances, and papers relating to foreign affairs and to the administration of justice. Here also were the documents relating to the general ecclesiastical history of the country. As soon as the old *Directorium* was abolished it was proposed to unite the two collections, but instead the papers of the defunct body were transferred to the ministry of finance. In its care they remained until the beginning of 1874, when they were added to the state collection proper, and the Prussian Archives assumed its existing form. Its treasures are being constantly increased by transfers from all the departments of the central government and from the provinces. The most serious losses which it has suffered during this century have come from the formation of a separate collection in the royal palace, and the transfer of about four hundred early documents to the provincial towns whence they had come.

In the provinces, with a very few exceptions, no attention was paid to the preservation of documents till after the beginning of this century. They existed, to be sure, in out-of-the-way places, and those which were needed for practical purposes were used by officials, but no effort was made to arrange or preserve them. After the close of the Napoleonic wars officials both of the central and the local governments began to turn their attention to the masses of documents in existence concerning the history of mediaeval and early modern society in all its phases. The German historical school was already in existence and it directed attention to these things. The growth of interest in the subject was moreover a result of the quickening national life. Any country where this is vigorous will take care of its memorials. In the history of Prussia those rulers and statesmen who have been most animated by the

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national spirit have done most for the preservation of its archives. Prince Hardenberg furnishes an illustration of this. When the office of chancellor was created in 1810 and he became its incumbent, he assumed charge of the archives. Under his lead, after the war had closed, the work of collecting documents was prosecuted. In 1820 he caused an ordinance to be issued for the formation of archives in the provinces which then existed. Two years later a directory was formed to which was given control of all the archives in the country, save those in the possession of individuals or corporations. Under this arrangement the collections in the provinces began to feel the stimulating influence of the central office at Berlin. After Hardenberg's death the control of the archives passed to the ministry of foreign affairs. With that it remained till 1852, when the minister-president was given control, provision being at the same time made for a director of the archives, who should have immediate charge of the work. Since 1866 the system of administration has been extended to the provinces gained in that year.

At present, then, there are in Prussia seventeen public record offices. The work done in these is under the charge of sixty-two trained officials, who have obtained their scientific equipment in the historical, philological and juristic *seminaria* of the universities. Appointments are not made upon examination, but appointees are subjected to a probationary test of three months. The result has been to bring into the service a corps of men eminently qualified to perform the duties required. The amount appropriated yearly by the Prussian government for the care of the archives is 350,000 marks—a sum inadequate for the purpose. Attempts have been made to secure an increase of the grant, but hitherto without success. The fact, however, that the archives are annually used by no less than 1200 men engaged in scientific research, testifies to their value and to the success of the system upon which they are administered.[1]

[1] For these and other facts the writer is indebted to Dr. H. von Sybel, the director of the archives, and to his assistants. They have with great kindness furnished the information requested.

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Previous to 1875, the date when Dr. von Sybel was placed in charge of the archives, but little of their contents had been published, and that little consisted for the most part of documents bearing on the history of the mediaeval emperors. But the government had already become convinced of the advantages which would come to the nation and to the world by making its collections more accessible. In this way not only would science be advanced, but the reputation of Prussia would be increased through the opportunity for a deeper and more widely extended knowledge of her history. Therefore, under the influence of Prince Bismarck, an increased appropriation was obtained[1] to enable the newly appointed director to carry out his plan. The coöperation of specialists from all parts of the kingdom was secured and soon the preparation of several works was in progress.

Though the archives of Prussia were found to be full of valuable material, searches were not confined to them, but were extended to local and foreign collections. The plan included the publication of materials on mediaeval as well as modern history, on the history of Germany as well as that of Prussia, and also on separate territories and provinces. It was laid down as a general rule that the earlier texts should be printed in full, but that only extracts should be given of later repetitions or confirmations of such documents. In modern times the mass of letters and other materials has become so great as to make a complete reproduction impossible. Therefore it has been found necessary to enforce the rule of careful selection with increased strictness. But in this, as in everything else which pertains to the scientific execution of the work, it has been found necessary to rely largely upon the judgment of the individual editors. Each of the volumes issued contains an introduction, stating with more or less fulness the character and location of the manuscript sources whence its contents have been obtained, and the principles by which the editor has been guided in preparing the texts for publication. In most cases the introduction is expanded

[1] See statement at beginning of Volume I of the Publications.

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into an historical outline of the subject treated in the volume, the material for this being drawn mainly, though not exclusively, from the texts themselves. In a few cases the historical introduction has been so extended that it has come to occupy the leading place. Thus the work becomes substantially a history with illustrative documents. Each separate text is furnished with a brief caption stating its subject matter. All are carefully numbered and dated. It will thus be seen that greater freedom of action is allowed the editors than in the English Record Office. The reason for this probably is that the work of editing the Prussian publications is largely done by specialists, not by officials. In England this is true of the *Chronicles and Memorials,* but not of the *Calendars* and other publications. The plan employed in Prussia is, we are told, in part an imitation of that pursued by the Historical Commission of Munich.

The *Publications from the Prussian Archives,* so far as issued, fill forty-nine large octavo volumes. They throw light on all periods of the country's history, and upon the history of nearly all the principalities which have been annexed to Brandenburg and which go to make up the modern Prussian state. In the east Prussia, Silesia, Grosspolen (Posen) receive attention. In the west much space is devoted to the history of Cleves and the principalities connected with it, to Westphalia (especially the city of Münster), to Hanover and to Hesse. Coming nearer to the center of power, the *Urkundenbuch* of the bishopric of Halberstadt is printed in this series, while some of the more general works have to do with Prussian history as a whole, either at certain periods or in some of its important aspects. Of the documents printed in the series by far the larger part lie between the dates 1400 and 1700; they contain materials for the history of central Europe at the close of the middle age and during the two centuries when the religious question was uppermost. In a few of the works are documents of an earlier date, in others matter bearing on Prussian history in the present century is found. From the period specially covered it follows that not a little of the material contained in the volumes is

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ecclesiastical or semi-ecclesiastical in character. For the purpose of briefly reviewing the contents of the series, it may be well to subdivide it into three parts: (1) that which deals exclusively with mediæval history; (2) that which concerns the period of the Reformation (1500–1648); (3) the volumes which throw light on the more recent history of Prussia.

II.

Of the works bearing on the middle age[1] all except one are collections of the characteristic mediæval documents — the *Urkunden*. By this word, as used by specialists,[2] is meant any written evidence of a legal transaction, or documents leading directly to or proceeding directly from such juristic acts. If issued by emperors, kings or popes, they are known as public *Urkunden;* when proceeding from any other source they are treated as private. Under this classification nearly all the documents in these volumes are private *Urkunden*. The Polish *Grodbücher* contain the records of the cases brought for trial before the *judicia castrensia* (*grod* = *castrum*), or lower courts, which during the middle age were held in the castles and were presided over by a dignitary or noble of the locality. Each court had originally jurisdiction within its district over cases of housebreaking, of assault committed on the persons of women, of arson and of breaches of the peace on the king's highways. As time went on their jurisdiction was extended so as to cover a great variety of civil suits brought by peasants against the

[1] The works comprised in the first group are as follows:

J. von Leckszycki, Die Aeltesten Grosspolnischen Grodbücher. 2 vols. (Nos. xxxi and xxxviii of the series.)

Arthur Wyss und Heinrich Reimer, Hessisches Urkundenbuch. 3 vols. (Nos. iii, xix and xlviii of the series.)

Dr. Gustav Schmidt, Urkundenbuch des Hochstifts Halberstadt und seiner Bischöfe. 4 vols. (Nos. xvii, xxi, xxvii and xl of the series.)

Dr. C. Grünhagen und Dr. H. Markgraf, Lehens- und Besitzurkunden Schlesiens und seiner Einzelnen Fürstenthümer im Mittelalter. 2 vols. (Nos. vii and xvi of the series.)

Dr. Joseph Hansen, Westfalen und Rheinland im 15. Jahrhundert: Erster Band, Die Soester Fehde; Zweiter Band, Die Münsterische Stiftsfehde. (Nos. xxxiv and xlii of the series.)

[2] H. Bresslau, Handbuch der Urkundenlehre, vol. i, and references.

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nobles, and suits arising out of commercial transactions. Thus they took their place as the lowest among the royal courts, with the right to hear both civil and criminal cases. The records of the courts within the districts of Posen, Peisern, Gnesen and Kosten for the last decade of the fourteenth century are here printed in full, and judging from the character and amount of the business done, they must throw much light on the social conditions of the times.

The *Urkundenbücher* of Hesse and Halberstadt contain a greater variety of documents. In the former the materials relate to the history of the commandery of the Teutonic Order in Hesse during the thirteenth and the first half of the fourteenth century, and to the origin of the province of Hanau. In 1207 the Count of Ziegenhain granted a church at Reichenbach to the Teutonic Order. In 1221 the Emperor Frederick II took the order under his special protection. Then gifts began to pour in upon it from the ecclesiastics and nobles of central and western Germany, particularly from the Landgraves of Thuringia. After the death of St. Elizabeth of Thuringia the order came into possession of the hospital which she had built at Marburg. Then they began to reap the full benefit of her saintly reputation, and under the favor of the popes and the nobles their wealth and influence grew apace. Before the close of the thirteenth century the commandery of Hesse had been formed, which in due time grew into the principality of that name. The growth of this territory, till the order which held it had firmly established itself in Prussia, may be traced in detail in these volumes. Here is the documentary evidence of the grants of land and of the great variety of rights, privileges and exemptions which went with it. Here are the gifts, sales, exchanges, releases of estates, and the repeated confirmations of such acts. We find evidence also of the favor of later emperors. In 1357 Charles IV took the hospital at Marburg under his protection and appointed the prior of the order at that place his chaplain. Repeatedly the popes encouraged gifts by the grant of indulgences.

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In the four volumes on Halberstadt the history of that bishopric, and of the ecclesiastical corporations which it contained, can be traced from the founding of the see in the ninth century to 1425. The materials here are wider in scope than those relating to Hesse; for, in addition to property transactions and grants of favor, they have reference to the election of the archbishops, to their confirmation by the popes, to their election capitulations, to their disputes with neighboring princes, and in fact to the entire archiepiscopal policy on its secular side.

In general, what is done by the works just referred to for two of the smaller territories, is done for one of the largest, and for the principalities and counties into which it was divided, by the volumes on Silesia. These cover its history during the last two centuries of the middle age, after Poland had in 1335 abandoned all claim to it in favor of Bohemia. The documents bearing on the relations between it and the Bohemian crown, and on the connection with Hungary which was thereby occasioned, form the most important part of this collection.

The next two volumes are of quite a different nature. They introduce the reader to the conflicts among the principalities, and between those and the cities, in western Germany during the fifteenth century. They contain the documentary history, with elaborate introductions, of the feuds between the Archbishopric of Cologne on the one side, and the city of Soest and the Bishopric of Münster on the other, which occurred about the middle of the century. Soest was a member of the Hansa, and shared fully in the ambitions which were at this time so strong among the German city populations. She had long been trying to free herself from the jurisdiction of Cologne, but had not succeeded, when the ambitious Dietrich of Moers became archbishop. About 1435 questions began to arise concerning the right of the archbishop to hold courts (the *Freigerichte*) and levy taxes in Soest. This affected all his Westphalian possessions and a combination was formed against him. At the same time the archbishop was involved in a dis-

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pute of long standing with the Duke of Cleves concerning the possession of the Duchy of Berg, together with other related questions. Cleves and Cologne were in fact rival principalities, the one secular, the other ecclesiastical, and each was striving after the leadership in northwestern Germany. Cologne, however, had much the larger possessions. The Duke of Cleves was related to Philip the Good of Burgundy, and both these princes for political reasons threw their influence on the side of Pope Eugenius IV in his struggle with the Council of Basel. The archbishop, on the other hand, was one of the leaders of the opposition in that council. It was natural that Soest, as soon as her controversy with Cologne became serious, should apply to Cleves for aid. She recognized the duke as her lord, and he in return contributed troops and supplies to the full extent of his powers. When the archbishop invoked the support of King Frederick III, the duke with the help of Burgundy called in the aid of the pope. Decrees were obtained deposing the archbishop and freeing Cleves from the jurisdiction of the see of Cologne. Cleves was even permitted for a time to have a separate bishopric. The archbishop immediately sought alliance with France, which was counted among the anti-pope's party at Basel, and through the aid of Saxony he called in a large force of Bohemian mercenaries who, since the close of the Hussite wars, were ready for any service in Germany. Thus the feud extended till it involved directly or indirectly many of the leading European powers. In the end the city of Soest was saved by the strength of its walls and the resources of its allies. Though on the accession of Nicholas V the decrees of his predecessor against the Archbishop of Cologne were reversed, the latter had to consent to negotiations which left Soest in the possession of Cleves, though the latter was not freed from the archiepiscopal jurisdiction (1449). This holds a prominent place among the triumphs won at this time by the cities over the princes.

But the policy of Cologne in Westphalia was not changed, and after a brief cessation the feud was resumed under a modified form. This time it began in a dispute over the

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succession to the see of Münster (1450). Its last incumbent was a brother of Dietrich of Cologne, and now under the influence of the latter the cathedral chapter chose a second brother to succeed. This was opposed by the people of Münster and of many parts of the bishopric, who had been sympathizers with Soest. Count John of Hoya put himself at the head of this party, and from his family the opposition candidate was selected. The Duke of Cleves at once gave him his support, and the controversy extended much as in the previous case. But the chief interest in this struggle attaches to the career of John of Hoya. He played the demagogue with such success as to gain the full confidence of the populace of the city. But after the feud had been in progress awhile, trade began to suffer and it was seen that the bishopric was becoming the sport of neighboring princes. The supporters of Hoya then began to divide, and a conservative faction among them sought compromise and peace. Hoya thereupon instituted a democratic revolution in the city and became its tyrant. All who opposed his sway were driven out. This shows the excitability of the populace there nearly a century before they were bewitched by the Anabaptists. The Hansa now condemned the revolutionary proceedings, the Duke of Cleves relaxed his efforts, and the forces of Münster were severely defeated in the field. The policy of John of Hoya seemed likely to prove fatal to the cause, when the archbishop's candidate died, and an opportunity was thus presented for a settlement of the dispute by the election of a member of the Bavarian house to the see. The exiles were allowed to return, the revolutionists had to abandon their control, but the family of Dietrich of Moers never again held the influence in Westphalia which it had previously possessed. By wise and cautious policy Cleves had won the chief advantage from the feuds, and the power of Cologne began from this period to decline. These volumes enable one to see with great clearness how Cleves was situated and what her policy was just previous to the beginning of the Reformation.

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III.

Coming now to the works treating of the Reformation,[1] we find that the materials printed consist for the most part of private and diplomatic correspondence. The volumes on the history of the Reformation in Prussia form an exception to this. In these the documents are miscellaneous in character, and but comparatively few of them are printed in full. They are briefly referred to by title or outlined. But this is in part atoned for by the fulness of the introduction, which, based on the materials here brought together, occupies an entire volume. In it the author describes the social condition of Prussia as it was at the beginning of the sixteenth century, showing how a population mainly Slavic and Lithuanian in origin was governed by Germans organized into a semi-ecclesiastical corporation. The heavy taxes levied by the Teutonic Order provoked general opposition, which showed itself most acutely among the native nobles and burghers. A radical change in the political system had become necessary. The ideas then gaining a foothold throughout Europe were favorable to secularization, and Albert of Hohenzollern, the new Grand Master, accepted and applied them. The transformation of Prussia into an hereditary dukedom (1525) was agreeable to the wishes of the emperor, for he thought that thereby its connection with the empire would become closer. This was to be the result, but not in the way the emperor wished. Duke Albert had already been under the influence of Luther and at Nuremberg of Osiander. He had adopted the reformed

[1] Dr. Paul Tschackert, Urkundenbuch zur Reformationsgeschichte des Herzogthums Preussens. 3 vols. (Nos. xliii, xliv, xlv of the series.)

Max Lenz, Briefwechsel Landgraf Philipp's des Grosmüthigen von Hessen mit Bucer. 3 vols. (Nos. v, xxviii and xlvii of the series.)

Ludwig Keller, Die Gegenreformation in Westfalen und am Niederrhein, 1555 bis 1609. 2 vols. (Nos. ix and xxxiii of the series.)

Georg Irmer, Die Verhandlungen Schwedens und seiner Verbündeten mit Wallenstein und dem Kaiser von 1631 bis 1634. 3 vols. (Nos. xxxv, xxxix and xlvi of the series.)

Dr. Otto Meinardus, Protokolle und Relationen des Brandenburgischen Geheimen Rathes aus der Zeit des Kurfürsten Friedrich Wilhelm. 1 vol. (No. xli of the series.)

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opinions, and when he attempted to carry them into practice in Prussia, he met with little opposition. The hold of Catholicism on the people was weak. Some still adhered to their pagan faith. So backward was the country intellectually, that humanism had not struck root there. So different were the conditions from those which prevailed in the West-European states, that the country could be said to be only nominally Catholic. Therefore in 1523 Polnitz, the foremost bishop, resigned his secular power, and the reformed faith was established at Königsberg. Thence it spread rapidly, and by the time the Order was secularized, the Reformation had triumphed. Changes analogous in every way to those made in the churches of Electoral Saxony and Brandenburg were introduced. Lutheran preachers were sent into the principality, the university at Königsberg was founded. Thus the secular and the ecclesiastical revolution in Prussia went hand in hand. The history of the movement from the ecclesiastical standpoint is fully treated by the author till about the middle of the century, when the founders of the Prussian church were all removed by death.

While Albert of Hohenzollern and his supporters were laboring for the reformation of Prussia, Martin Bucer, the Strasburg preacher, was trying to smooth the differences between sects and thus to keep the peace in Germany. To this he devoted his life, whether on the continent or in England. Not only did he stand almost in the front rank among German Protestant theologians, but he also possessed a wide knowledge of men and affairs. He was in communication with the leaders of the time among all parties, and his sympathies were broad enough to enable him to understand their views. During the third and fourth decades of the century he corresponded more or less regularly with Philip, Landgrave of Hesse. The correspondence began when preparations were making for the conference at Marburg in 1629 over the differences which were causing strife between the Lutherans and Zwinglians. In this Bucer was greatly interested, though his policy of peace did not win a complete triumph till the issue of the Wittenberg Concordia in

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1536. Later Philip summoned him to aid in checking the progress of the Anabaptist heresy in Hesse, and in this he was successful. Meantime Bucer's letters show that he was brooding over plans for bringing the Protestants of Germany, France and England into closer relations and for influencing the monarchs in their favor. He proposed the sending of Melanchthon to England and intervention on the part of the German princes to win Henry VIII over to Lutheranism. But the princes never found the plan feasible, though Bucer continued to urge it long after the divorce of Anne of Cleves.

The relations between Bucer and the landgrave were most intimate between the years 1539 and 1542. It was during this interval that Philip incurred the guilt of bigamy. All the Protestant leaders were greatly disturbed by this, and it was only through the help of Bucer that they were brought to countenance the relation between Philip and his so-called second wife. For nearly two years also the landgrave was working hard to bring about a union of the German princes, both Catholic and Protestant, against the emperor, and in the interest of the "liberty" of the estates. The most important of these negotiations were carried on with the Duke of Bavaria, and with the plan was involved that of saving Cleves and Guelders from falling into the emperor's power. If the scheme should succeed, it was hoped that the Protestants would secure their freedom, and the constitution of the church be reformed. Bucer came forward with a plan to secure this and urged the coöperation of Catholics and Protestants against a national peril. When the plan failed through the inactivity of the estates, the landgrave at once made overtures of peace to the emperor. To prevent Philip from allying himself with the French, Charles V through Granvella encouraged these advances. In the following negotiations Bucer was very prominent, and they prepared the way for the great theological debate before the emperor at the diet of Regensburg, 1541. Bucer bore a leading part in this debate, hoping to secure a national council and ultimate agreement as to essentials between the contending parties. But the Protestants were no more successful in their efforts to bring

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the emperor to satisfactory terms than they had been in trying to unite the estates in opposition to him.

The acts of this diet are printed in these volumes, together with the correspondence of the parties engaged in the negotiations which preceded it. The correspondence as printed continues till 1547, and touches, among other things, on Bucer's residence at Cologne at the time Hermann of Wied was attempting the reformation of the archbishopric, on the feud between the Protestants and Duke Henry of Brunswick, on the condition of parties just before the outbreak of the religious war.

The last work in the series the contents of which directly concern the Reformation is Ludwig Keller's *Gegenreformation in Westfalen und am Niederrhein.* This contains documents, with the usual explanatory chapters, illustrating the efforts of the clergy and the Catholic powers, especially the Spanish, operating from the Netherlands, to suppress the Reformation in Cleve-Mark and Jülich-Berg and in the bishoprics of Münster and Paderborn. Here we have still another chapter in the history of that much-agitated middle region, adjoining the hereditary Burgundian territories and encircled by the great ecclesiastical principalities of the West. When the Religious Peace was concluded, not only the Augsburg Confession, but also the Reformed faith and the Anabaptist heresy, had gained a firm foothold among its populations, and their power of resistance, moreover, was increased by the large number of their co-religionists who fled thither from the Netherlands. The Calvinists and Anabaptists were not protected by the Peace. After the diet of Augsburg, in 1566, the aid of the Spanish under Alva and his successors was invoked, Duke William of Cleves and his sons were converted from their liberal (Erasmian) opinions and practices to Catholicism, a papal nuncio was sent to Düsseldorf, and efforts were everywhere made to discourage or suppress Protestant worship. A marriage was concluded between John William, the second son, and a princess of the house of Bavaria. That power then took a leading part in promoting the Catholic cause in Cleves. But the daughters of the old

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duke could not be induced to abandon their Protestant faith, and one of them, Maria Eleonora, in order that she might be removed as far as possible from the court, was married to the Duke of Prussia. This proved in the end a fatal step for the Catholics, for from it originated the claim of the Hohenzollerns to the united duchies of Cleves and Jülich-Berg, together the strongest principality in northwestern Germany. Soon after his marriage John William was associated with his father in the government. Then (1583) the work of restoring Catholicism began in earnest. But such was the opposition and the anxiety caused thereby, that before ten years had passed the young duke became insane. A dispute arose in consequence over the rights of his wife, the Bavarian princess, as regent. This divided the Catholic forces and opened up the prospect of the Hohenzollern succession. The council of the duchy, which was Catholic, obtained the support of the Spanish and of the emperor, and thus was able successfully to resist all the efforts of the Protestants. The princess was excluded from the government and, it was thought, murdered; Spanish troops were introduced from the Netherlands, and the religious privileges which the cities had so jealously guarded were violated with a high hand. Still, in spite of all efforts the Catholics were only partially successful. The mad duke was married a second time, and disputes similar to those which had arisen before were repeated. Thus the confusion and conflict of parties continued till the death of John William in 1609. Then the Hohenzollerns took possession as joint rulers with the Palsgrave of Neuburg, and the ultimate triumph of Protestantism in the principalities seemed assured. In Münster and Paderborn, because they were ecclesiastical principalities and the Jesuits were admitted to special influence, the movement toward Catholic restoration was more successful than in Cleves.

The volumes treating of Gustavus Adolphus and Wallenstein have an interest more directly political than the preceding works on the period of the Reformation. The career of Wallenstein and diplomatic relations during the critical period of the Thirty Years' War have long been a favorite subject for

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investigation. The editor in his introduction briefly reviews the method of treatment to which the character of the great imperialist general has been subjected. He shows that the historians who preceded Ranke were either his uncompromising defenders or opponents. They either accepted *in toto* the statements of Rašin, the Bohemian diplomatist who had stood high in the confidence of Wallenstein and who sold his information to the emperor, or they sought wholly to discredit his account. To those who pursued the former course the general seemed a traitor from the outset. Ranke was the first to treat the subject objectively and to subject to criticism all the materials known in his time. He refused to adopt either the imperialist or the Bohemian standpoint. The result was the picture of a man who at first, with the help of the Swedish king, tried to make for himself an independent place in Germany, and who, after the death of Gustavus Adolphus, labored to counteract the clerical and Spanish influence in German politics, and sought, with the aid of Electoral Saxony and Brandenburg, to establish a freer and more independent system.

This view the editor accepts. He believes that the documents previously published and those contained in his own volumes go to substantiate it, though he admits that so much still remains undiscovered, especially private papers, that points in the career of Wallenstein will long be subjects of dispute. He himself has searched widely among the archives of the states of northern Europe which were engaged in the conflict, while Gindely and others have devoted themselves more especially to Spanish and Italian authorities. The most important new material printed in these volumes was discovered in Hanover and Sweden. It consists of the diary and a part of the correspondence of Lawrence Nicolai, a Swedish diplomatist who came with Gustavus Adolphus to Germany and resided at Dresden till the autumn of 1633, and of the correspondence between Chancellor Oxenstiern and Bernhard of Weimar during parts of 1633 and 1634. The papers of Nicolai throw much light on the negotiations between Wallenstein and the Protestants during the year following the battle of

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Lützen. The correspondence between Maximilian of Bavaria and Richel, his vice-chancellor resident in Vienna, and between the Austrian generals, Gallas, Piccolomini and the rest; some papers of Arnim, the Saxon diplomatist, and of Alex. Erskein, the Swedish resident at Erfurt; letters of Kinsky, and of Ilow and other officers who confederated at Pilsen in January, 1634, to support Wallenstein — contribute largely to our knowledge of the events which immediately preceded his final removal and assassination. The work closes with a reprint of testimony taken at the trial of the supporters and accomplices of the general.

The opinion expressed by the editor in his exceedingly well written introduction, wherein he has drawn upon the entire Wallenstein literature, is that previous to his first removal from command in 1630 the duke had no thought of treason. That was the turning point in his career. Then correspondence was opened between him and the Swedish king, but the victory of the Swedes at Breitenfeld rendered the aid which Wallenstein had already promised unnecessary, and negotiation ceased. After Lützen his main effort, as revealed by his occasional utterances, was to secure peace for Germany. Spain, the pope and Bavaria were recognized by him as the great obstacles in his way, and the hope which he seems to have cherished, of overcoming these without making the emperor his enemy, was vain. However, with the Protestant powers behind him he hoped, if it came to the worst, to coerce the emperor. But the confidence of these powers he was never able fully to gain. Arnim's trust in him was rudely shaken by his apparently inconsistent conduct in 1633. Wallenstein himself distrusted Arnim, while to him the Swedes, like the French, were only foreigners. Throughout his intrigues the duke took a deep interest in the plans of the Bohemian exiles for restoration to their country. They wanted to make him king, but it does not appear that the crown they had to offer had great attractions for him. The acceptance of it would have tended to defeat his larger plan. From the papers of the Duke of Saxe-Lauenburg and of the Polish officer Schlieff, light is thrown on the efforts

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of Wallenstein to obtain help and to guard against attack during the last days of his life. But they were vain. He had attempted too much and had lost the confidence of all except a few officers and soldiers. When Bernhard of Weimar was asked for aid, he refused to believe that the duke had broken with the emperor, though the order for his arrest had already been issued.

If this view of Wallenstein's character be the true one, it was his assassination which removed the last obstacle to the continuance of the war. After that it must be prolonged till sheer exhaustion brought it to an end.

Dr. Meinardus in his work on the Brandenburg privy council, the first volume only of which has been issued, introduces the reader to another phase of German history during the Thirty Years' War. He proposes to print the minutes, reports and resolutions of the privy council during the years 1640 to 1688. The part now published extends to April, 1643, covering the last year of the life of George William and the beginning of the reign of the Great Elector. Brandenburg had been suffering from the policy of violent opposition to the Swedes which had followed the conclusion of the Peace of Prague. In that treaty she had followed the lead of Electoral Saxony and hoped thereby to rescue Pomerania from the bonds of the northern invaders. But in opposition to the desire of his council the elector declared the Swedes enemies, and at once Brandenburg was overrun by their troops. For years she suffered from their devastations, the elector being forced to take refuge in Prussia, and the defence of the electorate being intrusted to the favorite, Prince Schwarzenberg. Never, not even in the time of Napoleon, did the country suffer as it did then. But the important thing to notice here is that during these years the privy council was dissolved, its members were dismissed, and the government was conducted exclusively by the elector and Schwarzenberg. The latter, though a statesman of considerable ability and pursuing an intelligible policy, used his position for his own enrichment, and, with his master, set at defiance the wishes of all classes of the subjects. But when Frederick William came to the throne, a change of policy at once followed.

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Schwarzenberg, though preparing to yield to the changes, was soon removed out of the young elector's way by death. As soon as possible military operations were brought to an end and negotiation, instead of war, was tried. The privy council was restored, and the men who were driven from power five years before were brought back. It was the policy of the Great Elector thenceforward regularly to consult his council, though he reserved to himself the right of independent decision. This was in no case allowed to the lieutenant of the elector in the latter's absence. The jurisdiction of the privy council extended to matters of internal administration, such as justice, the domains and ecclesiastical affairs, its scope depending largely upon the instructions of the elector. By 1642 the number of its members had been increased to eleven, and at their meetings votes might be reached either with or without debate. The influence of the council was sometimes merely formal, but usually it was real and actual. A certain degree of separation was maintained between the business of Prussia, that of the Mark and that of Cleves, the three components of the Hohenzollern possessions.

IV.

The works in this series which deal with more recent times fall naturally into two groups, the one bearing on the history of Hanover and Brunswick during the seventeenth and eighteenth centuries,[1] and the other treating of certain general phases of the history of the modern Prussian state.

The original material in the volumes on Hanover consists chiefly of the memoirs and correspondence of the Duchess Sophia, wife of Ernst August and mother of George I of

[1] Dr. Adolf Köcher, Geschichte von Hannover und Braunschweig, 1648 bis 1714. Erster Theil, 1648–1668. 1 vol. (No. xx of the series.)

Dr. Adolf Köcher, Memoiren der Herzogin Sophie, nachmals Kurfürstin von Hannover. Part of one vol. (No. iv of the series.)

Eduard Bodemann, Briefwechsel der Herzogin Sophie von Hannover mit ihrem Bruder, dem Kurfürsten Karl Ludwig von der Pfalz, und des Letzteren mit seiner Schwägerin, der Pfalzgräfin Anna. 1 vol. (No. xxvi of the series.)

Eduard Bodemann, Briefe der Kurfürstin Sophie von Hannover an die Raugräfinnen und Raugrafen zu Pfalz. 1 vol. (No. xxxvii of the series.)

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England. They dwell on the private life of the duchess and on the family history of the German courts more than on the political events of the time. But they are, of course, an authority of the first importance for the history of the contract by which George William of Hanover signed away his territorial rights on behalf of the children of his younger brother and Sophia, thus bringing them ultimately into possession of the electorate. The correspondence of the Count Palatine Charles Louis with his sister-in-law reveals how the marriage between the count's daughter and the Duke of Orleans was brought about, which was an important step in the plan of Louis XIV for securing the Palatinate. In the letters of Charles Louis to his sister he dwells on the ravages committed by the French in the Palatinate during the war of 1672 to 1678. He was then able to see how little the forced conversion of his daughter to Catholicism, that she might obtain a lofty position at the French court, had availed him. The later correspondence of Sophia, then electress, with her nephew and niece of the Palatinate, contains the record of her feelings concerning the English succession as they developed from 1690 to her own death. In her youth she had been prominently mentioned among those upon whom the Prince of Wales, afterwards Charles II of England, might bestow his hand. Now, after the changes of half a century, the prospect was again presented to her of occupying the throne of that country. But even after the passage of the Act of Settlement in 1701 the opposition of Anne and the Tories to the Hanoverian succession made the outlook anything but encouraging. The wisdom of the electress is shown in her reserve. Her letters prove that, though she was the recognized heiress to the throne, she was content to let affairs take their course. She saw that it was better for her to remain in Germany than to visit England, that active urging of the Hanoverian claims could result in no advantage. In this course she persisted throughout, and hence the succession came peacefully, though she did not live to witness it. Both the correspondence and the memoirs based upon it show that Sophia of Hanover

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was in her century one of the noblest representatives of German womanhood.

The group of works concerning Hanover will find their fitting culmination in the elaborate history of that principality by Dr. Köcher. He intends to cover in four volumes the period from the Peace of Westphalia to the accession of the Hanoverians to the English throne. Only the first volume has yet appeared, containing a minute review of the first two decades of the period. The material is drawn almost wholly from the archives and from published collections, and the text abounds in ample quotations from the original documents, while very important papers are printed in full. The aim of the author is to treat of the relations between Brunswick-Lüneburg and the neighboring states and principalities, rather than of its internal history. The material which he uses is for the most part new, and the work will fill a place left hitherto unoccupied. It supplements the well known histories of Prussia by enabling the student to view the events of the reign of the Great Elector from the standpoint of a rival principality. It carries one into the midst of the political relations of northwestern Germany. It shows how under a system of joint rule the heirs of the Brunswick estates learned to coöperate, and thus rose gradually from the condition of weakness in which they were left by the Thirty Years' War till they could bring into the field a well trained force of 30,000 men. The conversion of Duke John Frederick of Celle to Catholicism threatened for a time the harmony of the family, but the danger was soon removed by mediation and agreement. The house of Brunswick was strongly Protestant, and a leading aim of its policy was to secure the guarantees of Protestantism which were contained in the treaty of Westphalia. It was also particularistic, suspicious of Austria because of her intimate relations with Spain, and jealous of the "freedom" of the imperial estates. It shared fully in the spirit of opposition shown by the princes toward the electors, this being one reason for the jealousy of the Brunswick family toward Brandenburg. A policy growing out of such elements as these must seek its support in alliances

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and leagues, manifold, temporary, rapidly changing. The history of these in their succession forms the staple of the volume before us. Brunswick first sought to confirm the Protestant guarantees, and its own position as a principality, through the League of Hildesheim, of which Sweden was a prominent member. But Sweden was trying to gain full possession of the city of Bremen, and to become its representative in the imperial diet. This offence against a German state forced Brunswick into alliance with the Great Elector. When Brandenburg soon after through Prussian complications became involved in war with Sweden, Brunswick sought protection in the *Rheinbund*, through which France was endeavoring to gain a controlling influence in German politics. But its Protestantism and its opposition to Sweden and to the Bishop of Münster brought the duchy into alliance with the Dutch Republic, and this soon developed into the fourfold alliance of the States General, Brunswick, Brandenburg and Denmark. The military operations in the Netherlands and the defence of Bremen helped to raise and train the army to which reference has been made. The *Rheinbund* collapsed, and when, toward 1670, Louis XIV began seriously to threaten the German and Protestant powers along the Rhine, Brunswick was ready to bear her part in their defence. With these renewed efforts to uphold the treaty of Westphalia the volume closes.

Lack of space prevents more than a passing reference to the volumes containing the lists of the names and places of residence of the students who matriculated in the University of Frankfurt on the Oder throughout its entire history.[1] It takes its place among similar publications of the kind, which will be of great use not only to the genealogist, but to students of social history.

Taking up the numbers bearing more on later Prussian history,[2] we find that Lehmann's *Prussia and the Catholic Church*

[1] Dr. Ernst Friedländer, Aeltere Universitäts-Matrikeln: 1. Universität Frankfurt a. O., von 1506 bis 1811. 3 vols. (Nos. xxxii, xxxvi, xlix of the series.)

[2] Max Lehmann, Preussen und die Katholische Kirche seit 1640. 5 vols. (Nos. i, x, xiii, xviii and xxiv of the series.)

Dr. Rudolph Stadelmann, Preussens Könige in ihrer Thätigkeit für die Landes-

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contains the largest collection of documents in the series. They come very largely from the state archives at Berlin, and constitute a very full documentary history of the policy of Brandenburg-Prussia toward the religious confessions represented within its territories during the period between the accession of the Great Elector and the death of Frederick the Great. The material here presented, with the introductory chapters which sum up the development previous to 1740, shows that from the earliest times the Electors of Brandenburg were supreme in church, as well as in state. That facilitated for them the work of reformation. But when in course of time they obtained Prussia and Cleve-Mark, and when John Sigismund became a Calvinist, though the majority of his subjects remained Lutherans, the ecclesiastical problem became very complicated. Brandenburg was Lutheran, but tolerant; Prussia was strongly Lutheran and extremely intolerant; in Cleves and the other western possessions the Catholic, the Lutheran and the Reformed parties existed side by side with most complicated relations, made still more intricate by foreign interference and by the fact that the Catholic family of Pfalz-Neuburg was now joint ruler of these territories with the Hohenzollerns. Brandenburg-Prussia was at this time a loose aggregation of provinces, possessing scarcely the germ of state unity. Under such conditions a rigid state-church system like that of England could not be maintained. The largest possible toleration which was consistent with the maintenance of governmental control over the confessions must be granted. This was the policy adopted by the Great Elector and followed by his successors.

cultur. 4 vols., Frederick William I, Frederick II, Frederick William II, Frederick William III. (Nos. ii, xi, xxv and xxx of the series.)

Max Posner, Frederic II, Histoire de Mon Temps (Redaction von 1746). Part of one vol. (No. iv of the series.)

Reinhold Koser, Unterhaltungen mit Friedrich dem Grossen. Memorien und Tagebücher von Heinrich de Catt. 1 vol. (No. xxii of the series.)

Paul Baillen, Preussen und Frankreich von 1795 bis 1807. Diplomatische Correspondenzen. 2 vols. (Nos. viii and xxix of the series.)

Dr. Ritter v. Poschinger, Preussen im Bundestag, 1851 bis 1859. Documente der k. Preuss. Bundestags-Gesandtschaft. 4 vols. (Nos. xii, xiv, xv and xxiii of the series.)

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The author compares his attitude toward the sects to that of Cromwell, both seeking the broadest practicable toleration. He also infers that the elector imbibed many of his ideas on this point during his early residence in the Netherlands. In Brandenburg he was able to grant the utmost freedom of worship for Cathôlics as well as Protestants. In Cleve-Mark he soon abandoned the specifications of the treaty of Westphalia and sought by special agreement with the palsgrave to secure peace on tolerable conditions for all parties (the Recess of 1672). In Prussia a similar result was obtained for the Catholics by a treaty with Poland. Arians, Socinians, Jews were freely admitted into the margraviate, while it was a general principle that the civil rights of none should be diminished because of their religion. The assumption of the crown by Frederick I strengthened the bond of union between the provinces, and thus made it easier to uphold the royal ecclesiastical supremacy. Documents showing the opposition of the papacy to this act are printed in this work, besides the correspondence of Vota and Wolff, two Jesuits who were deeply interested in the negotiations concerning the Prussian crown. During the reign of Frederick William I the acquisition of Guelders and Lingen added to the number of Catholics in the kingdom, while the conquest of Silesia by Frederick II increased them eightfold. This made the problem of government more difficult, but the adoption of eighteenth century philosophy by the young king insured the continuance of toleration, while his lofty ideas concerning the state prevented him from abandoning its rightful supremacy.

Corresponding in importance to the work just noticed are the four volumes of Stadelmann, which unfold the economic policy of the Prussian kings, from Frederick William I to Frederick William III. The materials for these also have been drawn from the archives at Berlin, and consist for the most part of the administrative orders and instructions of the kings themselves. In them may be seen the tireless activity especially of Frederick William I and Frederick the Great, and their almost herculean efforts to increase the resources of

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their kingdom. It was destitute of natural advantages. Its population was sparse, and of its peasantry the larger part were serfs. But the kings possessed unlimited power and they used it to the full in the promotion and control of enterprises for the public good. No better instance of paternalism can be found in history, and it is difficult to see how without it Prussia could have survived the ordeal of the Seven Years' War. Her society was almost exclusively agricultural, and hence could bear this policy better than an industrial community.

Economically, as in most other respects, the central provinces of the electorate had to be resurrected after the close of the Thirty Years' War. The Great Elector led in this work, and here again set the example for later times. He issued ordinances for the building and repair of cottages, for the draining of land, for improvements in the care of land and of stock, for the promotion of tree and garden culture, for the regulation of the royal domains, for encouraging the immigration of Huguenots after the revocation of the Edict of Nantes. He sought to promote in all possible ways the prosperity of the country, that it might recover as soon as possible from its exhaustion and be able to bear the new burdens imposed upon it. But in the work of internal administration in this department the Great Elector was surpassed by Frederick William I. He in this respect was the greatest of the Prussian kings, his son simply following in his steps and building diligently on the foundations already laid. Stadelmann's work, like the studies of Schmoller, reveals the king colonizing Salzburgers and other exiles in the kingdom, so that during his reign from this source alone its population is supposed to have been increased by 600,000; bringing waste and submerged lands under cultivation; reorganizing the administration of the domains by changing the form of lease and instituting the *General-Directorium* largely for this purpose; improving the system of taxation; changing serfdom into hereditary dependence; building and repairing roads and making rivers navigable; building magazines for the storing of agricultural products, improving seed, stock and agricultural implements, and promoting the cultivation

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of various products; introducing in the eastern provinces the German methods of agriculture, sending thither trained farmers and establishing model farms; building churches and schools throughout the country and introducing compulsory school attendance; establishing at the universities (Halle and Frankfort) two professorships, one of agricultural economy and the other of cameralistic science. It was upon East Prussia, lately visited by war and pestilence, that Frederick William expended his most systematic efforts, and there the best results of his work were revealed. But his hand was felt everywhere, in affairs the most minute as well as in large concerns. He could by a cabinet order instruct his subjects how to bind their grain, or what lambs they should kill, as well as encourage home industry by forbidding the exportation of wool and the importation of woolen manufactures. He was constantly watching his officials and investigating their conduct. He personally examined everything, and the numerous comments written by his own hand on the margins of reports show how searching was his scrutiny. It was the king's devotion to this work and the noble results which came from it, which aroused the admiration of the young Frederick, and in part led to the reconciliation between him and his father. As crown-prince Frederick was subjected to thorough training in the administration of the domains, and so was prepared to carry on the work with the greatest energy along the lines marked out by his father. Dr. Stadelmann has treated this side of the great king's career fully and in a very interesting manner. He has also carried his investigations through the next two reigns, describing the reforms of Stein and Hardenberg and the consequent change of the economic system of Prussia into its modern form.

In the *Histoire de Mon Temps* and the *Memoirs of de Catt* other sides of Frederick's character are brought into view. The version of his *History* here presented is that written immediately after the peace of Dresden and covering the first and second Silesian wars. It was carefully revised in 1775, when the *Memoirs* were issued in their final form. The editor

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in his notes has compared the two versions and noted the changes which were introduced in the second. He has also collated the passages from the correspondence and other writings of Frederick in which statements were made concerning persons or events mentioned in the text, the purpose being to show whether the judgments of the writer changed in any degree with the lapse of time. In the present work Frederick always speaks of himself in the first person; in the revision of 1775 he adopted throughout, like Cæsar, the impersonal style. In many cases also his judgments are softened and broadened, and the production assumes a more dignified historical tone. But the version now first critically edited will be of equal value to the investigator, because it gives the author's first impressions, before the feelings aroused by the events had cooled.

When we open the *Memoirs of de Catt*, we turn from Frederick the historian, who was seeking by all means to hand down to posterity a correct account of his deeds, to Frederick seeking relaxation from the burdens of war in conversation, literary criticism, the writing of sonnets, and in discussions about the future state. When journeying on the Rhine in disguise in 1755, the king met Heinrich de Catt, a man of Swiss birth, who had studied the humanities at Utrecht, was a brilliant conversationist and well versed in the ways of the world. Three years later Frederick, then in the midst of the Seven Years' War, invited de Catt to take up his residence with him as *Vorleser*, *i.e.* a sort of private secretary. The offer was accepted, and de Catt remained with the king till 1780. But his duties were more social and literary than official in character. He was well acquainted with French literature, was something of a critic, and possessed almost unfailing tact, and it was for the relaxation which intercourse with him afforded that he was kept in camp and at court. De Catt was with the king almost daily during the weary campaigns of 1758 and 1759, and claims that in his *Tagebücher* (printed in Dr. Koser's volume) he set down brief notes of the conversations he had with Frederick as soon as possible after they occurred. In later years these

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were expanded into the *Memoirs*, which, with the *Tagebücher*, are now for the first time published. The picture of the king presented in these is most attractive, and in its outlines is undoubtedly true. In these, the darkest years of his life, Frederick showed himself a hero in endurance, as well as in achievement. His large endowment of humor and the diversion which his cultivated literary taste furnished, combined with the consciousness that he was suffering in his people's cause, enabled him to look ruin in the face for three years without flinching. The *Memoirs* show clearly how it was done, though the editor has proved that in details they are very untrustworthy. De Catt has contrived throughout to give himself an undue prominence. He has padded his accounts of campaigns and battles with statements taken from military histories. He has probably brought together into his account rumors and incidents from a great variety of sources. It is impossible to suppose that he could reproduce the language of the king, as he claims to do throughout. Statements which are based on the *Tagebücher* of course have greater credibility than those which are not, and the editor in his notes refers to all the passages in which the two works agree.

The last work in the series to which reference will here be made — for Dr. Poschinger's *Preussen im Bundestag* is already too well known in this country to need description — is Baillen's *Preussen und Frankreich.* By the peace of Basel (1795) Prussia withdrew from the first coalition against France and adopted a policy of neutrality. Relying on the reputation her arms had won under Frederick the Great, she sought to mediate between the powers in the interest of peace. This could be done, with any prospect of success whatever, only by a state of the first rank, and Prussia by no means held such a position. The abandonment of Austria, which was occasioned by the traditional jealousy of the two states, resulted in the complete isolation of Prussia. Her influence throughout Europe was destroyed and she was forced to yield to one French demand after another. The record of this decline may be read in the documents here collected from the Prussian and

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French archives and published. No sooner was the line of demarcation established under the treaty of Basel than it was crossed by the contending forces. Then Caillard was sent by the French to Berlin to negotiate a treaty of alliance, and Sandoz-Rollin was sent by Frederick William II to Paris to save, if possible, the provinces west of the Rhine. The dispatches of both these ambassadors are printed in this work and contain valuable accounts of the political development at the capitals where they were resident. Sandoz-Rollin was unsuccessful and the western provinces had to be abandoned; Caillard concluded a treaty in 1796 in which the neutrality of northern Germany was recognized by France. This was in harmony with the views of Haugwitz, the Prussian minister. But the efforts of the French to secure a treaty of alliance were at this period doomed to failure. Caillard labored for it long and enthusiastically, but had to yield to Siéyès, who soon declared that Prussia must be removed beyond the Elbe and France seek her allies among the small German states. This was a correct foreshadowing of ultimate results, and the fact that Siéyès held the view so firmly totally unfitted him for the work of pacification at Berlin. But Talleyrand did not show this spirit and the French government could not yet afford to drive Prussia into the coalition. Therefore negotiations were somewhat aimlessly continued till the First Consul took them in hand. Their course may be followed in detail in the first of these volumes.

In October 1800 the Marquis Lucchesini was sent by the Berlin government to Paris, where he remained till the outbreak of war in 1806. His dispatches, with the replies and instructions which they elicited, occupy the larger part of the second volume. The occasion of Lucchesini's mission was the prospect of peace (Lünéville) and the reëstablishment of friendly relations between France and Russia and Austria. The ambassador was instructed to watch the development of internal affairs, as well as the whole field of foreign relations so far as they affected Prussia. He had frequent interviews with both Napoleon and Talleyrand, and his despatches contain important

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information concerning the manner and views of both, as revealed during negotiation. He had to take up again the question of the compensation which Prussia should receive in return for the cession of the territory on the left bank of the Rhine. After urging one proposition after another and seeing them modified or rejected by France, he was finally forced to accept certain districts on the Ems in Westphalia, much smaller in extent and population than Prussia had been led to expect (May, 1802). During these negotiations Lucchesini saw and reported the contempt with which Napoleon regarded Prussia. Count Haugwitz, perceiving the character of the First Consul, began in a series of memorials printed in this volume to urge a more vigorous policy against him, though without abandoning the idea of neutrality.

The intentions of the French were revealed with startling clearness by the occupation of Hanover in 1803. The possibility of this had already been discussed, but the conclusion of the peace of Amiens had for a time removed the plan into the background. Haugwitz protested strongly against the measure and recommended the armed occupation of Hanover by Prussia; but this the king regarded as dangerous, and the French were allowed to enter the electorate without opposition. Soon afterward the plan of seizing Bremen and Hamburg and stopping English trade on the Weser and Elbe was revealed. Later Rumbold was seized. Thus the French advanced from one encroachment to another, showing how little regard they had for the Prussian system of neutrality. For a time, however, it was thought that only England would be involved in the war. That was the report which Lombard, the statesman who was supplanting Haugwitz in the king's confidence, brought back from Brussels, whither he was sent in 1803 to negotiate with Napoleon concerning Hanover. But as the months passed a breach with Austria and Russia became more and more certain. If it occurred, the maintenance of Prussian neutrality would become impossible. Hence mediation between Russia and France was tried, but in vain. It was only in October, 1805, after French troops had marched through Ans-

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bach, neutral Prussian territory, that Frederick William began to adopt measures of defence. But then, so great seemed the necessity for peace that it was temporarily secured under the form of an alliance with France, concluded just after the battle of Austerlitz (treaty of Schönbrunn), which in its final form necessitated not only the cession of territory, but the closing of Prussian ports against England. Prussia considered herself fortunate to obtain in return possession of Hanover. But with the encroachments of Murat, the new Duke of Cleves, the alleged intention of Napoleon to restore Hanover to England, the formation of the Confederation of the Rhine, the massing of French troops in western Germany, it appeared that the troubles of Prussia had just begun. The system of neutrality had long since collapsed, the immediate prospect of war had now be faced. The documents at the close of the second volume relate to the alarm preceding the outbreak of hostilities, and to some events connected with the war itself and with the French occupation till the peace of Tilsit.

Even so cursory a review of the *Publications from the Prussian Archives* as it has been possible to give in these pages reveals the great importance of the series. Though the work of preparing and issuing it has been in progress less than twenty years, it has already reached dimensions which entitle it to a place among the great series of *Quellen* published by the learned societies and institutions of Europe. In a great scientific field it is a monument of systematic and well directed effort properly supported by the state. It shows that Prussia is as careful to hand down to posterity a correct account of its history as was Frederick II, the greatest of her founders, when he wrote his memoirs and subjected them to minute and frequent revision. The volumes already issued relate to the most important periods of the country's history, and the wealth of their contents betokens a rich harvest still to come.

HERBERT L. OSGOOD.

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A NEW CONTRIBUTION TO ECONOMIC HISTORY.[1]

AN eminent historian in the English Cambridge once penned, in the course of an effective protest against the *belles-lettristic* treatment of his subject, a solemn warning about interesting books. "It is not generally by fascinating books that the scientific knowledge of the world is advanced."[2] But the new professor at Harvard has succeeded in showing that it is possible to make the results of thorough and careful study "fascinating." While most discriminating in the use of evidence, he has yet the knack of introducing concrete instances and illustrating his subject by useful analogies; he has been able to carry his readers along wonderfully, and to give a vivid interest to the discussion of difficult technicalities. Dullness is not a necessary concomitant of learning. The condemnation of the *belles-lettres* writers of history lay in the fact that they were not careful to show the justification for each step in the development of the story. A history which merely states the writer's opinions in regard to the past may be true or false; but whether true or not, it is always worthless to the student, if he has no means of examining the data on which it rests, and correcting or confirming the conclusions it contains. A work like the present, which puts in clear light the results of genuine research, is a real addition to scientific knowledge, not only because it gives an exposition of conclusions actually established, but because it affords a firm basis for pushing investigation farther.

Some portions of this volume have already seen the light, but Professor Ashley was well advised in re-issuing them now, with the valuable fresh matter which he has been able to add, instead of waiting to complete his work on all sides. The exigencies of limited time and changes of place have prevented him from attempting to picture the industrial and social conditions of each successive age in order, or from dealing systematically with the relations and interconnections between economic and political life. The subject of the foreign trade of the country is deliberately omitted; Columbus

[1] An Introduction to English Economic History and Theory. By W. J. Ashley. Vol. I, Part II (in the American edition, Vol. II): The End of the Middle Ages. London, Longmans, Green & Co.; New York, G. P. Putnam's Sons, 1893.—xi, 501 pp.

[2] Prof. Seeley, in *Macmillan's Magazine*, XIV, 295.

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and Cabot, with the age of discovery, are ignored; governmental action, whether in directing lines of policy or imposing taxes, is scarcely alluded to. Since such important groups of facts are passed by, it might be said that the volume is not exactly a history, but rather a collection of historical essays. But this phrase is used advisedly, to indicate the range and scope of the work, not its quality. The word essay has been unduly degraded in recent years; but the term which has been chosen to designate their work by Petty and Malthus and Vinogradoff will always have honorable associations for students of economic history.

Professor Ashley has separated out the most important sides of industrial life, and followed out with great clearness their development during three centuries. Drawbacks are to be found in connection with any order of treatment, and Professor Ashley has no immunity from the common lot. Three hundred years is a long time; there is room for a great deal of change, and in reading about such a long period as a whole, it is not always easy to fix with precision what special date is intended. Professor Ashley has recognized this source of confusion (page 98), but he has not sufficiently guarded against it. For instance we read:

> In earlier centuries the merchant gild had stood above all the craft gilds, and had exercised or claimed jurisdiction over them. But now, owing to a concurrence of forces, the merchants of the town had come to be themselves grouped in associations, which stood not above, but alongside of, the purely artisan bodies. [Page 24.]

But what case can be specified of a merchant gild claiming "jurisdiction" over craft gilds in centuries earlier than the fourteenth? It obviously is not true of London; of what English town is it true? What epoch in these three centuries is denoted by the word "now"? How much gradual change and of what varied sorts is glozed over by the phrase "a concurrence of forces"!

To take another case, it is rather bewildering to read that

> the economic activity of the early middle ages was an almost exclusively agricultural one. . . . Then there slowly arose a merchant class; at first, it would seem, merely to meet the needs of the wealthy and more luxurious, and then to transport from place to place a local superfluity of such raw produce as corn or wool. But with the appearance of craft gilds we see, for the first time, a body of men with whom manufacture was not a bye-employment. [Page 99.]

As we find weavers' gilds in the twelfth century, how far back are we to look for the slow growth of the merchant class? Indeed

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what proof is there that there ever was in any English town during the early middle ages such a merchant class, as distinct from craftsmen or shipmen who traded? From the language he uses about this supposed merchant class (page 209) and the earlier craft gilds, it would almost seem that Professor Ashley has not taken sufficient account of the researches of Dr. Gross. But this point, as well as his persistent denial of an important artisan immigration from the continent in Norman times, belongs more properly to the subject of his earlier volume, and need not be discussed in any detail here.

The want of precision, of which complaint has been made, gives rise to a difficulty of another kind. Three hundred years allows time for a town to rise and flourish and decay; and when the period is taken as a whole, there is danger of not sufficiently accentuating the fluctuations which occurred within it. Professor Ashley recognizes the decay of municipalities, as authorities for directing and regulating industrial life, but he declines to believe in the general decay of their material prosperity in early Tudor times (page 50). This is the more surprising as he himself admits elsewhere that the older towns were in economic difficulties from the competition of the new domestic manufactures (page 235). Such decay is probable enough; and there was at least a widely spread opinion in Tudor times that towns were decaying. It seems to be a gratuitous exercise of ingenuity to try and explain away a part of the evidence on the subject.

But to turn to more important matters. On one interesting topic, to which I have already alluded elsewhere,[1] Professor Ashley has collected an immense amount of interesting information. The survivals of communal economic life are treated in considerable detail; several instances of the continuance of town bargaining are adduced,[2] and the whole account of the town granaries[3] is fresh and full of interest.

Professor Ashley has devoted but a small amount of space to rural life; but his map of the enclosures in the fifteenth and sixteenth centuries is a painstaking attempt to make a first approximation to the solution of a difficult problem. No one can hope yet awhile to say the last word on any such point in economic history; but he has done well to put on record in this convenient form the results he has reached from the sources available to him; it will be for himself and others to fill up details and to render the whole more

[1] *Quarterly Journal of Economics*, V, 343. [2] Page 39. [3] Page 34.

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accurate. The discrimination he has exercised becomes apparent in the hesitation he expresses about placing Northamptonshire among the enclosed counties, despite the explicit evidence of W. S. in the well-known *Dialogue*. This hesitation is fully justified; since it appears from Miss Lamond's edition[1] that Devonshire, not Northamptonshire, is the right reading in the *Dialogue*. It is also shown by a paper in the British Museum that Northamptonshire was regarded as a typical unenclosed county in 1607.[2] The soundness of Professor Ashley's judgment is thus confirmed by independent evidence. On the other hand, it may be doubted whether the assumption, that land which was open field in the eighteenth century had never been enclosed, is justified. It does not seem clear, because Arthur Young found some district in common fields, that these had never been enclosed and thrown back again into the old condition. Were none of the riots against enclosure successful, not even those of 1549? The case of Warwickshire seems to be in point; the south-east of the county was unenclosed in the time of Leland; it is equally certain that the enclosing of this very district had been proceeding rapidly in 1459. John Ross complains of the new dangers on the road between Warwick and London, and specifies many villages in this part of the shire which had suffered severely by the progress of sheep-farming, and from which the villains had been evicted.[3] In connection with this it is also noticeable that Professor Ashley seems to regard 1470 as the beginning of the movement (page 286); but John Ross certainly gives the impression that it had been going on for some time even in his day. The earliest case of riot in connection with Warwickshire enclosures that I have noticed was in 1374, when "the commons of Coventry rose, and cast loaves at the mayor's head, and cast open that which the mayor had enclosed."[4] This is not precisely relevant, perhaps, as it does not appear to have been a case of the eviction of villains. But it at least serves to show that sporadic enclosure was found profitable a century before the time when, according to Professor Ashley, the movement became general and rapid.

[1] A Discourse of the Commonweal of thys Realme of England, first printed in 1581, and commonly attributed to W. S.; edited from the MSS. by E. Lamond (Cambridge, 1893), p. 49, l. 13.

[2] Tit. F. IV, f. 319.

[3] Historia Regum Angliæ, p. 122.

[4] Wanley's Collections. British Museum. Harl. MSS., 6388.

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There is also some difficulty about the date he fixes for the close of the period of rapid enclosures; he puts it at 1530. But surely the dissolution of the monasteries and the influence of the new nobility tended to accelerate rather than to check the progress of enclosure. The whole story of John Hales and the commission of 1548 seems to show that the work of enclosure, accompanied by depopulation, was going forward rapidly; indeed Professor Ashley's own language lends some confirmation to this view. "The transference of the monastery lands to private owners increased very largely the area troubled by these agrarian changes." Had the church lands remained in ecclesiastical hands, "the transition would probably have been more gradual and less ruthless" (page 317). But if this is so, why is the time of rapid change placed so early? Was it really over before this ruthless and widespread transition began? Here as elsewhere the treatment of the same topic in different parts of the volume does not seem to be quite self-consistent.

The most important subject in regard to which Professor Ashley has not only supplemented but corrected the work of other writers (including myself) is the confiscation of gild property under Edward VI. He shows that the act of Parliament was much more discriminating than is usually stated, and that its scope was carefully confined to the property devoted, either temporarily or permanently, to religious objects; though he does not examine the cases of the "concealed lands" of the Grocers and other London companies,[1] he shows that in some other instances an honest attempt was made to carry out the measure without going beyond the limits to which it was confined. Whatever the actual results may have been, it is no longer possible to describe the enactment as a sweeping measure of confiscation.

But there is another problem of which the solution is not so plain. Professor Ashley seems to suppose that if their property was not illegally confiscated, the authority of the gilds and companies was also preserved. This is the question which seems to me of primary importance; did these gilds and companies survive as recognized authorities, with coercive powers for the regulation of industry? That similar authority was subsequently called into being by parliamentary or royal action is obvious. But is there any proof that the coercive authority of the old companies continued to be exercised after the Combination Act of Edward VI? Even in a city like York, where the action of the companies seems to be unbroken, there is evidence to show that though apparently continuous, it had assumed

[1] Strypes, Stow's Annals, book v, p. 233.

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an entirely new character in 1519, and that the companies merely played the part of informers, while the authority was directly exercised by the mayor.[1] The really important question is not as to the continued existence of certain bodies as holders of property or as amateur dramatic clubs, — for this is clear enough, — but as to their continuance as industrial authorities. Professor Ashley fails to pay sufficient attention to the very important distinction between the different sources from which the authority to exercise regular control over industry was derived. Had he examined it, he could hardly have referred to Adam Smith in the way he does: the corporations which the *Wealth of Nations* condemns were companies like the Sheffield Cutlers, who exercised powers conferred by Parliament; Adam Smith was inclined to take a more favorable view of the corporations in Scotland,[2] which were municipal in character, and therefore were true, though imperfect, analogues of pre-Reformation craft gilds in England.

In an earlier chapter, indeed, it appears to me that Professor Ashley has strained the analogy between the industrial institutions in English and in Scotch towns (page 72). The "trades" of the latter were much more closely allied to continental than to English usage, at any rate after the Scottish war of independence. But his treatment of the condition of the poor is an excellent example of the successful use of the comparative method; this is far less likely to mislead when it is used to fill out a description, than when appeal is made to it to supply an explanation. The condition of the poor in England before the Reformation period has hitherto been very obscure, and the side lights which are thrown upon it from the researches of continental historians are of very great value. As ecclesiastical institutions and charity were similar in all parts of Latin Christendom, there is every probability that the same usages would be adopted in dealing with similar social problems; and this view is confirmed by the isolated information drawn from English sources. The chapter is quite admirable.

The last chapter also, on "The Canonist Doctrine," is deserving of the highest praise. Those who recognize that thought and sen-

[1] It is agreed that the searchers of no occupation within this city, suburbs and liberties of the same shall have the correction and punishment of the defaults done and commenced concerning all the said occupations or any of them, but that the same defaults hereafter shall be punished and redressed only by the mayor for the time being and his brethren, and half of the forfeiture of the said defaults shall remain to the weal of the said city, and the other half to such occupation as the case shall require. — Drake, Eboracum, p. 215.

[2] Wealth of Nations, Nicholson's edition, p. 51.

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timent are the most powerful of all economic forces, will not regard the space allotted to this discussion disproportionate, even though the direct consequences of the changes of opinion were not immediately apparent. Professor Ashley's account of the matter is clear and sympathetic; it will surely be less possible for modern theorists of reputation to brush aside with ignorant contempt the distinctions drawn in the middle ages.[1] Even those who have devoted some little attention to the subject will find much that is fresh and interesting in Professor Ashley's chapter, especially in his account of Eck, Major and the Romanist divines of the sixteenth century.

These two chapters are among the best in a book that is excellent, though somewhat unmethodical, throughout; and there are passages which show that Professor Ashley has a clear view of the importance of history, and its relation to other branches of economic study; there is an underlying system. We hear nothing of universal "laws," but only of useful generalisations of more or less importance (page 262). Again in regard to the statement that capital is an historical category, we read these excellent remarks:

> What is true of "capital" (not as economists have understood it, but as the world uses the term) is equally true of the great jural conceptions of "property," "inheritance" and the like. These are not logical abstractions, but the varying expressions in thought of varying usages in social life. There is no abstract right of property, but there have been at various times varying rights of property; and similarly, there is no eternal stamp upon things which makes them capital, but merely varying means attached to the possession of wealth for the acquisition of further wealth. [Page 434.]

The standpoint from which he writes is definite, and his mode of investigation is fruitful; in the freer atmosphere of the New World he can even allow himself the luxury of bestowing good advice on fellow-workers who are forced to engage in controversies on method.[2] But it is surely permissible to ask why we should not apply to the study of present day phenomena, the same principles of careful observation and limited generalisation that are so instructive for the affairs of bye-gone times? So long as practical influences exclude those who devote themselves to political economy as an empirical science from taking any part in teaching or writing on modern affairs, the controversy about method is likely to continue. If such students are to be forced into silence, they will certainly ask the reason why.

W. CUNNINGHAM.

[1] Böhm-Bawerk, Capital and Interest, page 24.

[2] Preface, page xi; compare also *Quarterly Journal of Economics*, VII, 123.

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REVIEWS.

Division and Reunion, 1829–1889. By WOODROW WILSON. [Epochs of American History.] New York and London, Longmans, Green & Co., 1893. — 12mo, xix, 326 pp., five maps.

As a rule the writing of an abridged history is a very difficult and almost thankless task. In the little volume before us Professor Wilson aims to give "a sketch in broad outline," "a rapid synopsis . . . of the larger features of public affairs" during the seventy years, 1829–1889. He has endeavored to write a brief but systematic narrative that would interest the general reader, instruct and direct the student and aid the teacher. A carefully selected list of about fifty books of reference is given at the beginning, and at the head of each of the five parts into which the work is divided, extensive references are furnished under the subdivisions of "bibliographies," "historical maps," "general accounts," "special histories" and "contemporary accounts." The five historical maps that accompany the volume are so clear and instructive as to make the work valuable to every one who takes any interest in United States history. The classifications, the grouping of subjects and the titles of chapters and sections are peculiarly clever and helpful.

The author has given the first third of his volume to the treatment of the period which was under the direct influence of General Jackson. Professor Wilson's insight into the tendencies of the times, the impulses of Jackson's nature, and into the effect which both had upon the contemporary political life, and especially the vivid manner in which all are characterized, indicate historical talent of an extraordinary quality. It is not so much in any originality of idea as in his frequently brilliant precision of expression. No one has ever said so much about this epoch in so few words as is expressed in the following sentences, taken almost at random:

> He [Jackson] impersonated the agencies which were to nationalize the government. Those agencies may be summarily indicated in two words, "the West." They were agencies of ardor and muscle, without sensibility or caution. [Page 25.]
>
> Jackson's election was the people's revolution; and he brought the people to Washington with him. [Page 27.]
>
> Jackson certainly embodied the spirit of the new democratic doctrines. His presidency was a time of riot and of industrial revolt, of brawling

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turbulence in many quarters, and of disregard for law; and it has been said that the mob took its cue from the example of arbitrary temperament set it by the president. [Page 115.]

It is with all the more regret, therefore, that we find the author compelled to crowd the last fifty years of his whole period into the procrustean measure of two hundred pages. At times he shows evidence of being ill at ease under his limitation; and the narrative in places becomes dogmatic, indistinct or abridged into inaccuracies. It will not suffice, with historical scholars, to assume that every threat of secession prior to Nullification was a sober exposition of the general interpretation of the constitution at the time. Nor will the average reader think the historian very clear and consistent in these sentences:

> The ground which Webster took, in short, was new ground; that which Hayne occupied, old ground. . . . The right upon which Hayne insisted, indeed, was not the right of his state to secede from the Union, but the singular right to declare a law of the United States null and void by act of her own legislature and remain in the Union while denying the validity of its statutes. There were many public men, even in South Carolina, who held such claims to be ridiculous. [Page 47.]

The author's reasoning on the subject of the sectionalization of the Union is nothing less than amazing. Taking von Holst's striking sentence: "The Union was not broken up because sectional parties had been formed, but sectional parties were formed because the Union had actually become sectionalized," he proceeds:

> There had been nothing active on the part of the South in this progress. She had stood still while the rest of the country had undergone profound changes; and, standing still, she retained the old principles which had once been universal. [Page 212.]

The startling ellipsis here both of thought and of fact is probably due to the author's making a generalization while bearing in mind merely the economic conditions of the two sections; for surely no scholar would venture to make deliberately the assertion that there was no change in the principles on which the South acted in 1820, 1850 and 1861. In fact, because the economic development of the South was no match for that of the North, she had to enlarge her political principles almost in exact proportion to Northern economic superiority.

There are many indications that the volume was written with a view to brilliancy in style and arrangement rather than to a com-

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plete mastery and sober presentation of all the facts. The author's statement (page 112) that by 1837 no Northern states except Connecticut, New Jersey and Ohio retained any property restriction upon manhood suffrage, overlooks the fact that the New York constitution of 1821 and 1846 disfranchised all men of color not possessed of a freehold estate of the value of $250. A less excusable error is the assertion that the Peace Congress of 1861 was "made up of delegates from all but the seceding states" (page 214); whereas neither Michigan, Wisconsin, Minnesota, California nor Oregon was represented there. We are also told that the processes of presidential reconstruction were complete in the autumn of 1865 "in every state except Texas" (page 259). The author might have learned from Johnson's message of December 18, 1865 (McPherson, *Reconstruction*, p. 67) that Florida also was still in a transition state.

Notwithstanding these and other mistakes, and in spite of an overwrought style and many almost bewildering refinements of adjectives and phrases, it is impossible to criticise the little volume without reluctance. The sincerity and uncommon ability which Professor Wilson shows are worthy a much more elaborate work. In fact, it seems to me that only in such an undertaking will he be able to do his talent full justice and perform his entire duty toward American history.

FREDERIC BANCROFT.

History of the English Parliament, together with an account of the Parliaments of Scotland and Ireland. By G. BARNETT SMITH. London, Ward, Lock, Bowden & Co., 1892. — Two volumes, 1167 pp.

The author states that his is the first full and consecutive history of Parliament as a legislative institution from the earliest times to the present day. Many years have been occupied in collecting the material and writing the book. It was the plan of the author to give in foot-notes a complete list of the references upon which his various statements are based. But to do this, we are told, would occupy as much space as the text of the book. That is, there would have been four volumes instead of two. As published, little space is occupied with foot-notes. A chapter is devoted to the history of the parliament of Scotland, and another to the Irish legislature. Fac-similes of various documents appear in the book, such as the writ of Edward I directing the sheriffs of London to return two

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members to Parliament, and the return of the assessor showing John Hampden and others as delinquents in the payment of ship money. The appendix contains *Magna Carta* and other documents.

Notwithstanding the author's statement that his book does not enter into comparison with the standard constitutional histories, the reader is sure constantly to make such comparisons. If the book had borne the name *Constitutional History* instead of *History of Parliament*, the reader would have detected little that was inconsistent with the title till he reached the account of legislation in the time of Victoria; and for the Victorian era there is not given a history of Parliament as a legislative body, but instead there is an account of the acts of Parliament classified under various heads. It is a constitutional history from a Parliamentary standpoint. Parliament is made prominent throughout, but there is no apparent effort to confine the narrative to the legislative functions of that body. Much care is taken to give a complete account of its judicial functions and to set forth its relations to the courts of law, while a large proportion of the space is devoted to a discussion of its relations to the king and the ministry. This is not a fault of the book. It is simply a fact growing out of the nature of the subject. The author is to be commended in that he has made no effort to discriminate sharply between the executive and the legislative functions of Parliament.

It is a serious fault of the book that the reader is left in doubt as to the authority upon which the various statements are based. If the work were simply a compilation from standard authors, this would not be a serious fault. But the book is not such a compilation. The author has made use of original sources of information. The standard authors are not simply quoted; in many instances they are corrected. Mr. Smith has evidently expressed in some cases his own opinions, yet there is no sign whereby these may be distinguished from the opinions of others. A reader who cares anything about authorities is not satisfied with the simple declaration in the preface that every statement in the book is based either upon official records or upon the conclusions of historians who have made themselves familiar with the subject. He wants to know just what the authority is. Especially does he want to distinguish between the author's own elaborations from official records and his quotations and paraphrases from standard histories. Many passages in the work are designed to give the impression that the

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author apprehends more clearly than the standard authors whom he quotes so freely the fact that the free democratic constitution of England is exceedingly modern. He seems to have his eye upon the masses of the people and to wish to make it evident that these were not usually taken into the account in the balancing of the dominant forces of the government until recent times. These passages taken alone would give the impression that Mr. Smith is not so much a victim of the tendency of historians to carry back and attribute to the past experiences which belong only to the present as are our standard authors on the English constitution. Yet there are other passages which would indicate that he is a greater offender in this regard than even Bishop Stubbs or Doctor Freeman. This is especially manifest in his use of the word constitution. The statesmen of the Stuart century were the first to find any use for the word as applied to the English government. Mr. Smith not only follows Freeman and Stubbs in applying the word constitution to the early government, but he does what these authors seem to have been careful not to do; he so uses the word as to give the impression that it was in common use by the statesmen of the earlier centuries. A good illustration of this may be seen in the first volume, page 274. Mr. Smith is evidently following Bishop Stubbs in his account of the establishment of the protectorate of the Duke of York in 1454. He says: "The duke promised to exercise his authority in a constitutional manner, as chief of the royal council." The corresponding passage in Stubbs is:

> The duke accepted the election with a protest that he undertook the task only in obedience to the king and the peerage of the land, in whom, by reason of the king's infirmity, "resteth the exercise of his authority." He requested farther the advice and assistance of the lords.

This description was sufficient to suggest the English constitution to the mind of Mr. Smith, and he thrusts in the word in such a way as to convey the erroneous impression that the Duke of York, more than four hundred years ago, expressly promised to rule in a "constitutional manner."

The book as it is is a useful and convenient compilation. As a compilation it would have been improved if the author had not undertaken at the same time to write a history of his own. He might have made it a good independent history had he boldly thrust forward his own work and made it possible to distinguish it from the work of others.

JESSE MACY.

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Geoffrey de Mandeville. A Study of the Anarchy. By J. H. ROUND. London, Longmans, Green & Co., 1892.—8vo, xii, 461 pp.

Under this title we should scarcely expect to find an important contribution to the constitutional history of mediæval England. Mr. Round, however, is not merely an original investigator of the first rank, but he also avoids the beaten track in his method of treatment. Throughout this volume the biographical detail is wholly subordinated to the political and constitutional development of Stephen's reign. The basis of his narrative is the career of Geoffrey de Mandeville, "the most perfect and typical presentment of the feudal and anarchic spirit that stamps the reign of Stephen." Mr. Round believes that by fixing our glance upon this one man, and by tracing his policy and its fruits, "it is possible to gain a clearer perception of the true tendencies at work, and to obtain a firmer grasp of the essential principles involved." I do not regard this as an ideal method of treatment, because, even in such strong hands as Mr. Round's, it is apt to be discursive and to lack real unity.

The thread around which the narrative is woven is the self-seeking policy of Geoffrey de Mandeville. He had charge of the Tower of London, and his authority was so great that he almost held the balance of power in the conflict between Stephen and the Empress Maud. In 1140 the king tried to secure his adhesion by making him Earl of Essex. This is the only known charter by which Stephen created an earldom, and it is the earliest known creation of a peerage. The next year, while the king was in captivity, Maud won Geoffrey over to her side by outbidding Stephen; her charter makes the earl hereditary sheriff of Essex as well as "*capitalis justicia in Essexia*," and it also contains an important grant of lands.

In his discussion of the term "*capitalis justicia*" it is difficult to follow Mr. Round, because at first he speaks as though it implied jurisdiction in the county court of Essex, but at the end of the chapter the reader carries away the impression that jurisdiction in Geoffrey's feudal courts is meant. Our confusion is increased by the apparent attempt that is made in another place (bottom of page 373) to connect Geoffrey's judicial office with London. Moreover, the comparison between his position in the county and that of the "justices" in towns seems untenable, especially when we consider that what Mr. Round calls the "typical charters" of London and Colchester (page 109) are not at all typical, but, as far as the use of

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the term *justicia* or *justiciarius* is concerned, quite exceptional or abnormal. Mr. Round says that the town "justice" had feudal or anti-royal functions similar to those conferred upon Geoffrey; but, by the author's own admission, the Colchester *justicia* corresponds to the later coroner, who was preëminently a royal anti-feudal agent. Moreover, the early municipal records indicate that even the most privileged towns were not exempt from the interference of royal justices during the twelfth and thirteenth centuries. What, it may finally be asked, could be the duties of a "localized" justice in London at a time when, as Mr. Round himself contends (page 356), that city had no "communal" government or corporate unity? The view which I have elsewhere expressed, that the *justiciarius* or *justiciarii* of London and Colchester were coroners, still seems to me to be tenable, though I admit that this may be demonstrated more clearly in the case of Colchester than in that of London. It may be added that, in connection with the new documents printed in this chapter, the author fails to call attention to the existence of the eyre in Stephen's reign, which those documents (page 111) seem to reveal. This fact would strengthen his contention on pages 100, 154, that the machinery of central government, though crippled, was not in complete abeyance.

When the tide began to turn against the empress, Geoffrey sold his support to the queen, who offered him better terms than Maud had granted, and in the latter part of 1141 these new concessions were confirmed by Stephen's second charter to Geoffrey. But even then the treacherous earl was not satisfied. He seems to have aspired to the rôle of king-maker, and in 1142 a higher bid from the empress induced him once more to cast off his allegiance to Stephen. The second charter of Maud gave him an additional grant of lands. This was Geoffrey's last move in the deep and perilous game that he was playing, and it caused his ruin. His treason was soon discovered, and he was obliged to surrender his castles to the king. Toward the close of 1143 he headed a revolt against the crown and fled to the fen-lands of Cambridgeshire. Here he was guilty of fiendish oppressions, typical of this period of anarchy, "when every lord had his castle, and every castle was a robber's nest." While besieging Burwell in August or September, 1144, the great earl was killed by the arrow of a humble churl. Mr. Round should have made the year of his hero's death clearer. In a final chapter the history of Geoffrey's descendants is given. Then follows an appendix almost equal in bulk to the body of the work.

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The above outline very imperfectly represents the contents of Mr. Round's book. Incidentally he throws new light on various problems of constitutional interest, such as the title to the English crown, the ceremony of coronation at Westminster, the origin and nature of earldoms, the development of the fiscal system, the administration of London and the early history of castles. He has also done much to straighten the chronology of Stephen's reign, and to vindicate that king against some of the charges of incapacity or weakness which have been brought against him.

The peculiarity of his method of investigation is his critical use of charters to illustrate both narrative and constitutional history. His views regarding the value of this kind of evidence recalls what Seyer says in the preface of his *Charters of Bristol* (1812):

> In tracing the history of the English nation . . . old chronicles must be perused, and above all, laws and records; one day thus spent will give more insight into the manners, the character and opinions, as well as the transactions, of a distant age, than thrice the time employed in reading the best history of England.

In like manner Mr. Round emphasizes "the chronicle-value of charters," *i.e.* their importance in supplementing the information given by contemporary historians. What he has accomplished ought, as he hopes, to "encourage the study of charters and their evidence," especially in connection with periods of which our knowledge is scanty owing to the paucity of the ordinary sources. It is certain that a vast amount of political, legal and constitutional history lies buried in charters granted to nobles, municipalities and religious houses.

Some may find fault with the author's severe criticism of Mr. Freeman, Mr. Loftie, Mr. Birch and others. Perhaps his language is now and then somewhat harsh, and he may be too much inclined to drift into polemical excursions. But I thoroughly agree with what he says on the subject in his preface:

> It is easier to prophesy smooth things and to accept without question the errors of others, in the spirit of mutual admiration . . . If my criticism be deemed harsh, I may plead with Newman, that, in controversy, I have ever felt from experience that no one would believe me to be in earnest if I spoke calmly.

The English public is so conservative that a half-hearted expression of disagreement with "the leading authorities" fails to carry conviction or to dislodge error. To counteract the excessive veneration of

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authority which is characteristic of the English nation, a writer must use plain and at times even strong language, or his words will not be heeded. Investigators of English history will, let us hope, continue to seek the truth and freely state it, even though certain English critics may continue to sneer at Dryasdust treatises, and to be shocked that any one dare refuse to accept all the dicta of Professor Freeman or Dr. Stubbs. In spite of such critics, scholars will rejoice at Mr. Round's valuable additions to the sum of historical knowledge, and will be pleased at the true spirit of independent research which characterizes his work.

CHARLES GROSS.

Lancaster and York. By SIR JAMES H. RAMSAY. Two Volumes. Oxford, at the Clarendon Press, 1892. — xlviii, 498; xxxiii, 559 pp.

The purpose of the author of this work, as he states in the preface, is "to supply a verified connected narrative of the first 1500 years of the history of England"; and he adds: "The book has been composed to serve no special theory or object, save that of bringing the reader as far as possible face to face with facts." For reasons that are not specified the author has published the last portion of his work first. Sir James H. Ramsay's objections to a purely constitutional history are, that the "writer is somewhat cramped by the necessity of regarding all things from the constitutional point of view, nor can he, without transgressing the proper limits of his subject, do justice to all sides of the national story." The preface seems to promise a history of England, viewed from the political, social, economic and constitutional standpoints. We are led to expect a work conceived on the broad lines of Lecky's *History of England in the Eighteenth Century*, but disappointment awaits us.

The author has consulted all the available original authorities, both the records and the contemporary historians. He has carefully collated his facts, and has given us a connected narrative of England's history from the reign of the unfortunate Richard II (1399) to the Battle of Bosworth Field (1485). The facts are stated clearly, full details are given of parliaments, of convocations, of foreign affairs, of military campaigns, of treaties and of truces. As an example of his minute methods of working, the following passage (vol. ii, p. 3) may be cited:

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The Constable de Richemont and the Count of Anjou, who were in command, began by taking Château Landon and Nemours; while another force took Cherny near Joigny. Montargis was too strong to be attacked. On the 25th August the French laid siege to Montereau; Charles joined them on the 21st September; on the 10th October the town was carried by assault; on the 22d Sir Thomas Gerrard surrendered the castle. On the 12th November Charles VII made his first entry into Paris as its King; the Dauphin Louis, then fourteen years old, rode beside him in full armour.

But, while the external life of the government is thus accurately depicted, no attempt is made to describe the undercurrents in English history, the hidden spirit pulsating through the nation. No scientific or in any manner adequate explanation is given of the gradual changes wrought in England during this century. The great constitutional changes effected under the first two Lancastrians are mentioned, but no theory is offered to explain them. The author seems unaware that the vast increase in the power of Parliament was due to the fact that Henry's title was not hereditary, but Parliamentary. When, moreover, an explanation of events or a criticism of any person is given, it is as a rule borrowed from Bishop Stubbs. Thus the only critical comment on the Parliament of 1406 is a quotation from Stubbs, "that it may be taken as 'an exponent of the most advanced principles of mediæval constitutional life.'" Creighton is drawn upon for the summary of the character and abilities of the Emperor Sigismund. While the work of collecting facts and materials seems to have been independent, Ramsay's conclusions and reflections are borrowed (*vide* vol. ii, pp. 24, 49, 78, 119, 159, 320, 492, 553–4).

The work is well printed and contains numerous plans and maps. Another excellent feature is the outline of financial history appended to the account of each reign. Though fragmentary, these outlines are of considerable value, especially to the student of public finance, since an attempt is made to classify the sources of the public revenue and the objects of expenditure.

In his life of Voltaire, Morley says: "Three kinds of men write history: the gazetteer or annalist, the statesman and the philosopher. The annalist's business is to investigate and record events, and his highest merits are clearness, accuracy and simplicity." Sir James H. Ramsay can claim no higher rank than that of an annalist, but he undoubtedly possesses all those attributes that Mr. Morley mentions as an annalist's highest merits. He is clear, simple and above all accurate. But history, since the days of Voltaire and Montesquieu,

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has passed out of the mental grasp of an annalist. In the nineteenth century the work of a chronicler, however meritorious, can never attain a higher position than that of a book of reference — a book in which one can with perfect confidence verify dates and the *minutiae* of events. Ramsay's book, however, lacks the chief and all-essential requisite of a book of reference — an index.

GEORGE LOUIS BEER.

English Trade and Finance, chiefly in the Seventeenth Century. By W. A. S. HEWINS, B.A., University Extension Lecturer on Economic History; late lecturer to the Toynbee Trust. London, Methuen & Co., 1892. — xxxv, 174 pp.

When the present writer, in conversation with a distinguished English economist, once remarked upon the fact that in University Extension classes in England there seemed to be some demand for economic history and scarcely any for economic theory, he was told that this was because it was easier to find satisfactory lecturers in history than in theory. A young man, my authority went on to say, can get up and tell an audience about the fourteenth or seventeenth century, and there is no one to contradict him; whereas, if he discourses on wages and profits the acute manufacturer and shrewd artisan are ready to catch him up at every turn. This was an explanation which, though not without a touch of irony, probably contained a largish grain of truth. There certainly was a time, and not so very long ago, when one or two treatises were given an unquestioning allegiance, and some half dozen stock ideas were stated and restated *ad nauseam* by those few persons who concerned themselves with the subject. But those days are passing away; it must be comforting to the theorists to find that there is now beginning to be almost as much divergence of opinion about the village community as about value. And, having regard to the depressing opinion above quoted, it ought to be even a little more cheering when the criticism of current statements comes from an Extension lecturer himself, as in the present instance.

Mr. Hewins describes his purpose as that of "supplementing, from contemporary authorities, the larger works . . . which are usually read by the [Extension] students." Accordingly he assumes the amount of knowledge obtainable from such books as Rogers, Toynbee and Cunningham's first edition, and gives us a number of critical essays on the monopolies, the trading companies, the con-

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dition of the working classes, and the three commercial treaties of 1703, 1713 and 1786, — essays full of information freshly stated, and of judgments worth considering. Perhaps the most valuable and solid part of the work is to be found in the scattered passages which describe the domestic system of industry, and compare it with modern factory conditions. Mr. Hewins believes, — as most of those who have given any serious attention to the matter are coming to do, — that the effects of the industrial revolution of the eighteenth century have been conceived far too melodramatically; that the domestic industry which it overturned was by no means full of idyllic charm; that, indeed, the rapid development of the factory, while for a time it multiplied and even intensified certain evils, brought out into clearer light abuses which had long before come into existence, and so led to their reform. Mr. Hewins has an intimate personal acquaintance with the condition of the Warwickshire nail-makers; and the sketch he gives of the history of the manufacture during the last three centuries is exceedingly instructive. He sums up with the declaration that the "transition to the factory system has increased the hardships of those who still cling to the wrought-nail trade, but the factory hands are better off and enjoy even greater freedom than was possible under the old system"; and he adds a comparison which I cannot refrain from quoting;

> Comparing their prospects under the two systems, there is no single point in which factory organization has not led to an improvement. There are evils to be removed . . . . . Two of the processes performed by the women, *viz.*, *fraying* and *turning*, are too severe a strain on their physical strength. The rate of wages, 7*s.* per week on an average, is low compared with that in the textile industries. Trade-union efforts have not hitherto met with success. But the healthier surroundings, the relatively higher wages, the less laborious work, and the more usual withdrawal of women from the factories have already exercised a beneficial influence on the people. These causes, taken in conjunction with the rapid development of interest in municipal affairs, the improved sanitation, the growth of free libraries and other means of education, the more frequent gatherings for social and political purposes, have greatly improved the lot of working men and women. [Pages 22–23.]

The whole account (pages 16–23) may be commended to the perusal of those who ask what is the bearing of historical investigation on the problems of to-day.

But it has already been hinted that Mr. Hewins's book is largely of a critical, not to say controversial character. The view which he

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would seem most anxious to controvert is that which regards with historical approval the great trading companies of the seventeenth century, such as the East India Company, and holds that their trading monopoly was suited to the conditions of the time. As he justly remarks in his very temperate preface, there is danger of a too hasty application to economic history of the theory of evolution; and "it is probable that more stress should be laid on the hostility to the various forms of monopoly which are found during that period." But in the body of the work this judicial temper is hardly maintained; the history of the various companies is accompanied by a running commentary of condemnation which the data presented to us do not always seem clearly to justify; and the summings up in various places scarcely succeed in putting the whole case before us. It is not a little difficult to discover what precisely is the *gravamen* against the company's method, or what Mr. Hewins would have put in its place. He recognizes that individual enterprise was out of the question, and that some sort of trade regulation was necessary (page xiv); and he grants that in the case of distant trades "the joint stock system was far more national with respect to the number of persons benefited than a (merely) regulated company could be," since it gave far greater "facilities for investment" (page 69). But he objects to monopoly. Surely a joint stock implies some sort of limit in the amount of capital invested. One would like to see a plan drawn out by which trade should be carried on by a joint stock company, and yet every one left free to join in the trade with just as much capital as he pleased. Mr. Hewins falls foul likewise, with impartiality, of the regulated companies; and why? Because the regulations imposed by the company "were frequently sufficient to take away all prospect of a reasonable profit" (page 65). Perhaps so; but one would like to know how. I hardly see why we should not recognize the force of the argument alleged at the time on behalf of the regulations, that "if trade were free, the rich would 'eat out the poor . . . and so there would grow a monopoly *ex facto*'" (page 31). For certainly much of the outcry against the companies arose from their limitation of the extent of the undertakings or the amount of stock of the several individuals engaged in the trade (*cf.* page 34). The outcry may easily have come from the richer traders, who saw their opportunities of gain restricted in the interest of the lesser traders; just as to-day it is often the wealthy unscrupulous dealer who is fighting his fellows by "cut prices" who cries out most virtuously against combination, and invokes "freedom of com-

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petition." We must not allow ourselves to be unduly impressed by the word "monopoly."

It is a pity that the character of the series in which Mr. Hewins's book appears precludes his supporting his assertions by the citation of authorities. For in many places, and especially in dealing with this topic, Mr. Hewins draws inferences for which he probably has some evidence, but in regard to which we have to suspend our judgment. Thus, the resolution of the Turkey Company in 1718 not to send cargoes for two years is described as "giving the London merchants a monopoly of the trade" (page 51). Surely it affected the London merchants, directly at any rate, as much as other members. The company alleged that the object of the temporary restraint was to overcome a glut in the Eastern markets. What reason is there to suppose that this was not the case; and if it was, why should not their policy be judged in the same way as that of an individual might be who chanced to have a monopoly of the market? If one might venture to dissect Mr. Hewins's mind rather than grub at the facts for one's self, — of course a wrong proceeding, — one might possibly find the explanation of some of his severe utterances concerning the companies in two characteristics. The first of these is perhaps a certain political bias which makes him sympathize with the opposition to the first two Stuarts; and the second is a remnant of — dare one say? — Manchesterism, of which he is himself probably unconscious. For we come across phrases — like "normal condition of trade" (page xv) — which smack strangely of the older economics.

That a reviewer should be led into this vein of controversy is itself a testimony to the stimulating character of the work; most of the books of its size that have appeared of late in this field have been mere *rechauffés* of other people's opinions. There is a good deal more in this of Mr. Hewins besides a condemnation of the companies; and especial attention must be called to his discussion of the effects of the justices' assessment of wages. I must hasten to add that this is just as controversial; and it ought to attract the notice of those who have given a too hasty credence either to Mr. Rogers or to Mr. Cunningham. Our author, with the reverence natural to an Oxford man who realizes how much Thorold Rogers did for his study, has a leaning towards accepting Rogers' opinions — which is very proper; but he interprets them in a higher sense, in which perhaps Mr. Rogers would hardly have recognized them.

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The appearance of a book like this is an encouraging sign of the times. It is a prophecy of the day when economic history will have its own circle of serious students and expert critics. And it is, we may trust, but the forerunner of a more considerable treatise from its author, which, by its store of references, shall give more opportunity to the reviewer.

W. J. ASHLEY.

The Economy of High Wages. An Inquiry into the Cause of High Wages and their Effect on Methods and Cost of Production. By J. SCHOENHOF. New York, G. P. Putnam's Sons, 1892. — 12mo, 407 pp.

Economic and Industrial Delusions. A Discussion of the Case for Protection. By ARTHUR B. and HENRY FARQUHAR. New York, G. P. Putnam's Sons, 1891. — 12mo, 413 pp.

In the first of these works the author begins by showing, through tables and comparisons, that during the last twenty-five years, in England, France, Germany and the United States, increased earnings of the laborers and decreased cost of production have gone hand in hand. Thus by induction Mr. Schoenhof claims to expose the fallacy of "the iron law of wages." In its place he presents what he calls "the true law of wages," which we may express as follows: High wages mean high productiveness, low cost of production and low prices. Only under a system of complete freedom, Mr. Schoenhof adds, can this true law of wages come into perfect operation. Under such conditions, however, in the interests of capitalist and laborer alike a perfect factory system would surely develop itself and all would work in harmony. Laborers and capitalists would not then be fighting each other for the largest share of an imaginary wage-fund, as Ricardo maintained, but each would be deriving a just remuneration from his legitimate share in the product itself.

Here in the United States, this true law of wages has been working itself out, Mr. Schoenhof declares, in our highly developed factory system, under the freedom secured by our laws of possession, not because of, but rather in spite of, the restrictions of our tariff laws. He is able to show us by convincing tables of comparison that, despite our high wage rate, the cost of production in all important industries in this country is equal to, if not actually lower than, that of Europe. America has at last, according to our author, worked out her industrial independence. We may reform our tariff now on the

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following basis: Abolish the duty on raw materials; keep on high-skill manufactures enough tariff to raise a revenue; establish technical and art schools to allow our laborers to learn better to compete with their more artistic foreign rivals; and give free scope to each one to work out his own individual end. Under such a policy, Mr. Schoenhof rather optimistically concludes, the present industrial and labor problems will solve themselves.

In the second work under review Mr. Arthur Farquhar deserves high praise for the logical reasoning employed, both deductive and inductive, all through the discussions. But one should bear in mind that though, as Mr. Farquhar maintains, customs duties are powerless in affecting the aggregate balance of exports and imports, still they may be employed in guiding the course and direction of our foreign trade. If, for instance, we as a nation deem our best interests to lie in first bringing the commerce of the American continent under our control, surely we are justified in accomplishing this end, if we will, by means of duties, rebates and reciprocity agreements. This we may do even if some branches of our European trade suffer thereby, provided the end to be secured will warrant this temporary sacrifice.

In his entire treatment of the subject of foreign commerce, Mr. Farquhar seems to me to confuse the laws of national and international economy. The conception that each modern industrial state forms as it were a politico-economic organism — the national standpoint, in short — is in this otherwise able argument utterly disregarded. If no system of protection is necessary between the Atlantic slope and the Rocky Mountain region, differing as they do, why then, Mr. Farquhar asks, do we require protective barriers between Liverpool and New York? The reason is apparent enough. One sovereign state with its own commercial law governs all trade between our East and West, while international custom and agreement — and eventually perhaps the force of arms — must still remain the arbiter of our foreign commerce. In our present stage of economic development, therefore, we can scarcely dismiss commercial treaties and reciprocity agreements as "mere devices of the protectionists" to gain their selfish ends. Indeed, if we extend our view to include the present course of commercial development among European countries, it would seem rather that our path toward a more general international freedom of trade lay directly along these lines.

LINDLEY MILLER KEASBEY.

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Report of the undersigned members [E. S. MARTIN and W. M. CANTY] *of the Delaware Tax Commission to the General Assembly.* 1893. Wilmington. — 32 pp.

Report of the undersigned members [J. B. PENINGTON, E. H. BANCROFT, D. J. LAYTON] *of the Delaware Tax Commission to the General Assembly.* 1893. Wilmington. — 16 pp.

Report of Counsel to revise the Tax Laws of the State of New York. CHAS. A. COLLIN and J. NEWTON FIERO, Counsel. Transmitted to the Legislature Feb. 3, 1893. Albany, 1893. — 125 pp.

Report of the Joint Committee of the Senate and Assembly relative to Taxation for State and Local Purposes. Transmitted to the Legislature March 17, 1893. Albany, 1893. — 24 pp.

During the past ten years we have had a number of state commissions on taxation, most of which have published documents abounding in suggestions wise and foolish. The reports here reviewed furnish good examples of each class. The Delaware reports are comparatively unimportant because of the insignificance of the commonwealth; but they are interesting as exemplifying the different tendencies at work throughout the country. Delaware raises its state revenues from corporation taxes and licenses, but depends for its local revenues upon the poll tax, the tax on real estate and that on a few kinds of tangible personalty. The farmers object to this and desire to reach in some way all owners of personalty. Hence the commission. The majority report approves of this desire, and recommends that intangible personalty, like money, investments, *etc.*, be taxed, that a tribunal be created for equalizing county assessments and that the collateral inheritance tax be reimposed. Although the signers confess that the general property tax does not work well in other states, they assert that this is due to "dishonest citizens," and that if certain kinds of property be exempted, "cunning and scheming men" will ultimately reduce the governmental revenues unduly.

The minority report, on the other hand, strenuously objects to the taxation of intangible personalty. Almost the whole of the report is an abridgment of the New York report of 1871–72 and the Maryland report of 1888, showing the injustice of the general property tax. The report is noteworthy for the fact that it adopts in its entirety the "equal diffusion" theory of incidence as elaborated by Mr. Wells, and quotes Adam Smith as the chief forerunner of Thiers

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and Wells! And although the commissioners "sympathize with the complaint of the Delaware farmer," they think that under the present system the taxes are "more equally distributed than in any other state." It is much to be feared that the Delaware farmer will not be satisfied with this Platonic "sympathy."

Far more important than the Delaware reports are those to the New York legislature. The counsel and the committee have chosen to present results rather than extended arguments. Their reports may be declared in some sense to mark a turning point in the history of American taxation.

The counsel affirm that they have studied not only the public documents of other states, but also the general literature of the subject, including the views of leading political economists of the day. They suggest that the information so obtained be collated for the use of the public for further reference, but in the present report they prefer to present simply their conclusions, proceeding on the principle of proposing nothing which has already been before the legislature and which has failed of adoption. If this principle were consistently carried out, there would be little chance for human progress. For every innovation is at first opposed, and the mere fact that the legislature has once in former years rejected a plan is neither a proof that they would reject it to-day, nor a reason why the advisers of the legislature should refuse to consider its feasibility. Thus the counsel object to the "building occupancy" tax because the legislature refused to adopt it in 1872. But they also discuss new plans. They object to the single tax, and even to the tax on real estate alone, because they cannot see the equality and justice of levying all burdens on the real estate owner. They object to the income tax as too inquisitorial, and at present quite inadmissible. At the same time they strenuously object to the "listing" system, although they call attention to the acknowledged defects of the personal property tax, and show that in Brooklyn personalty pays only four per cent of the taxes.

What, then, is to be done to secure equality of taxation?

The general property tax is to-day supplemented by the corporation tax and the inheritance tax. Any great increase in the corporation tax is objected to on the ground that this ought to carry with it an exemption of corporations from local taxation, as in Pennsylvania. But this the counsel think unwise, because the local bodies are not willing to forego so large a source of revenue. Again, they object to a tax on corporate bonds, first, because it is at present legally

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impossible to tax bonds held outside of the state, and secondly because bonds are already taxable to the owners as personalty. The only suggestions made as to corporate taxation are, to apply to other corporations the machinery of collection applied to the taxation of bank shares, and to apply the earnings tax on transportation companies to foreign as well as to domestic corporations. As to the inheritance tax, the counsel content themselves with a slight change in restricting exemptions. While apparently regarding with favor the settlement of the mortgage tax question in Massachusetts, California, *etc.*, they refrain from any recommendation, because the legislature has heretofore considered the matter and taken no action. Furthermore they propose a tax on deposits of savings banks above a certain limit. Finally they object to "local option," because they clearly see that this simply means taxation of realty alone; and they correctly maintain that this should be done by a general statute or not at all.

Since, therefore, the present system of taxation is unjust, they think that one of two courses must be adopted: either personalty should be entirely exempt, or substantially all personalty should be taxed. The first plan seems too radical, therefore we must try to reach personalty. This may be done by improving the machinery, by centralizing the administration and by providing for a state equalization of personalty as well as for that of realty.

The report of the counsel is timid and conservative. But it possesses at least the distinction of not falling into the gross mistakes which so many of our recent state commissions have committed. On the other hand, the report of the legislative committee is not only in the main sensible, but it is radical.

In the first place the committee agree with the counsel in opposing the income tax and the principle of local option in taxation. Secondly, in opposition to the counsel, they maintain (1) that the taxation of savings banks deposits would be an undesirable interference with the savings of thrifty people; (2) that the equalization of taxes on personalty "would legalize a system of official guessing," and would only intensify the conflict between the local divisions; but (3) that a state tax on mortgages would be a desirable innovation, and even at the rate of only one-half of one per cent would produce nearly five millions of dollars. Thirdly they propose certain changes in the inheritance and corporation taxes, calculated to increase their yield and to equalize the burdens. The progressive principle is to be applied to the inheritance tax, and the exemption

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of real estate is to be abolished when the estate exceeds $50,000. Again the virtual exemption of heavily bonded corporations is to be removed by assessing a corporation tax in such cases upon the par value of the stock, instead of the market value. Finally the great principle is laid down of a definite separation of the state and local revenues. The changes suggested in the specifically state taxes will, it is believed, suffice to meet all state expenses. Real estate may then be left to the local bodies, and the whole question of local taxation may then be discussed by itself.

It will be seen that the committee's report is by all means the more important. The first condition of improvement in our tax methods is to be found in the abolition of the property tax as a state tax. The idea of course is not new; for it has been urged for over twenty years in the reports of the New York state assessors and of officials in other states (*e.g.* Illinois), and it is, as we know, in practical operation in Delaware. But this is the first time that the suggestion has been adopted by a committee of the legislature itself in an important commonwealth. It is in line with all the best thought on the topic, as well as with the tendency of recent tax reforms in Europe. This alone would make the report noteworthy.

The suggestion of a graduated inheritance tax is perhaps in harmony with the growing public sentiment. But the proposed plan of dealing with corporations is not so satisfactory. If the heavily bonded corporation is so successful that it pays high dividends — as is frequently the case — the adoption of the par value instead of the market value of the stock as a basis would only intensify the present inequality. The counsel, again, are entirely too timid in deprecating a tax on corporate bonds. The taxation of the corporations on an assessment equal to the value of their bonds would immediately remove the legal obstacles, and would restore equality of taxation as between the various classes of corporations. But neither the committee nor the counsel see that no form of corporate taxation can satisfy the demands of justice until the problems of double taxation are attacked; and that no adequate solution can be found until inter-state agreements are adopted. It is to be deplored that no suggestion of this kind is to be found in either of the reports. The proposed tax on mortgages, again, is a makeshift. The committee forget that to tax the mortgagee on the mortgage and the mortgagor on the whole value of the land is an unendurable double taxation. Were the mortgagor to be taxed only on the unencumbered portion of his property, as is the case in many other states,

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the tax on mortgages would be less unobjectionable,—although even then the plan hinted at by the counsel would be preferable.

Slowly, but surely, we are moving toward a readjustment of the American system of taxation. The ultimate form can already now be faintly discerned: A separation of state and local revenues; the state revenues derived chiefly from corporation and inheritance taxes; the local revenues derived from real estate and the other elements of taxable faculty. Both the committee and the counsel recognize the fact (and herein they differ from the Delaware commission) that the problem cannot be solved merely by exempting personalty. Both see that the income tax, as a state or local tax, is no solution for us. Both are groping after adequate substitutes. That some form of mortgage taxation will be a part of the new system, is probable. That a more refined system of corporation taxation will reach other important classes of personalty, is certain. That additional taxes must be imposed, designed to reach the remainder of individual faculty—and based perhaps on outward signs and presumptions—is not recognized either by the New York or by the Delaware reports. But the recognition of the fact will come as soon as the demand for the abolition of the personal property tax has made more headway. Let us be thankful at all events that the New York reports take on the whole a step in the right direction. They do not give us by any means all that is needed; but the adoption of their fundamental proposals would make future reforms less difficult.

EDWIN R. A. SELIGMAN.

Die Handelspolitik der Wichtigeren Kulturstaaten in den Letzten Jahrzehnten. Drei Bänder. Schriften des Vereins für Socialpolitik, XLIX, L and LI. Herausgegeben von Dr. GUSTAV SCHMOLLER. Leipzig, Duncker und Humblot, 1892.—x, 645, 210, 208 pp.

Libre Échange et Protection. La politique douanière de tous les pays expliquée par les circonstances de leur état social et économique. Par M. LÉON POINSARD. Paris, Firmin Didot et Cie., 1893.—xvi, 630 pp.

These four volumes deal with a single subject, the commercial and industrial reorganization of Europe during the past two years. The intense agitation has at last expended itself in tariffs, treaties and conventions, of whose origin and history these works have

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gathered up the essential facts and packed them down for future reference.

By far the more valuable and comprehensive of the two works is that of the *Verein für Socialpolitik.* This presents an enormous mass of facts, assiduously collected from all quarters, and scientifically arranged by thoroughly competent specialists in every country of the civilized world. Every personal element has been so far as possible eliminated. The whole work was carefully outlined at first by the editor, with the express purpose of securing a just proportion between the various parts and facilitating international comparisons. It includes in its scope the effects upon the social body as well as the influence exerted upon particular industries by recent changes in the tariff laws. It was not anticipated that any new or startling discoveries would be made; but the series was intended to illustrate the general state of affairs now existing, together with the causes which produced it. Previsions and predictions, which so often overweight books upon these topics, were carefully excluded. Especially is the work valuable in its treatment of those countries which lie on the borderland of civilization and which are partially isolated by reason of differences of language. The chapters upon Russia and the Balkan States have rendered much interesting matter available to the student of commercial history. Dr. Peez, the zealous advocate of a Pan-European *Zollverein,* contributes a good discussion of the German-Austrian relations. In the article upon the United States Professors Mayo-Smith and Seligman have summarized the recent tariff legislation; and several tables are appended which will be valuable for reference. It should be noted that this portion is printed in English, so that it is more available for use by American students. This collection of monographs is on the whole an authority which no student of modern international relations can afford to be without.

France appears to be the keystone in the European arch of protection. The two works before us give an opportunity of comparing the opinions of two competent French judges as to the probable effect of the tariff of 1892. The tone of these views cannot be said to be cheerful. In the German work Dr. Devers, representing the social or anti-classical French economists, says:

> If the tariff of 1892 should cause a high price of grain or a decrease of exports, public opinion, so powerful in France, would surely be ready to reduce it at once.

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And M. Poinsard, a moderate protectionist, writes :

It is true that the measures of retaliation directed against us by some countries seem at first disquieting from the point of view of a closure of our foreign markets. But these countries will suffer more than we by the new state of affairs and will be compelled to seek anew a market for their raw produce.

This reasoning is applied to Turkey and Eastern Europe to-day exactly as it was used in 1887 for Italy. But Dr. Sombart has shown that the tariff war between Italy and France has opened a new market for Germany in the south. And it is not unlikely that the same result may follow with regard to Spain. The fact which writers like M. Poinsard neglect is, that Germany is seeking for cheap raw materials and will eagerly take all that the agricultural states have to give, if they will but take her goods in return. The agricultural states are indeed compelled to seek a new market for their raw produce, but it is in Germany and not in France that they find it at last.

The excellent chapter in Dr. Schmoller's work upon the conditions in Bulgaria, Servia and Roumania sheds much light upon the troublesome Eastern question. The growth of German trade and influence in the Danubian countries is bound to be a factor in any political complications of the future. All that is needed is lower railway rates in Austria-Hungary and a further clearing of the Danube river in order that a powerful impetus may be given to the present tendency toward a relative decline of French trade in the East.

This brings us to what seems to be a fundamental defect in M. Poinsard's work. He fails to appreciate the condition of affairs in Germany and the Balkan States. More than forty pages are devoted to a discussion of Turkey, while but eighteen are given to Germany, though the latter confessedly "takes rank in industry second alone to Great Britain." Despite the author's attempt at candor and fairness, it appears as if national prejudices had not been altogether eliminated ; or else the author is not familiar with the mass of German literature upon the subject. There is a tendency, natural perhaps to a patriotic Frenchman, to advocate such remedies for the ills of Europe as would redound to the industrial independence of France ; that is to say, to under-rate the importance of the national idea which is so potent a factor in Italy and Spain. Although, indeed, on grounds of abstract expediency, the present exclusive policy of some of these countries may deserve the criticism to which

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M. Poinsard subjects it, yet this policy has been rendered necessary by the action of France. But the author does not hesitate on some occasions to criticise his own people. He ascribes the present unrest in France to the universal distaste for industry manifested by the upper classes, the exaggeration of militancy, the tendency to speculation, and finally to the excessive development of governmental activity.

While issue may be taken with M. Poinsard as to some of his final conclusions, his work is on the whole a very suggestive and valuable one, especially for French readers. This importance is derived from the fact that it speaks for a school not represented in the *Société d'Économie Politique*. It reads much like the work of Friedrich List, especially in its classification of nations according to the degree of industrial development which they enjoy. The author distinctly affirms that the tariff problem is rather social than industrial or commercial; and *laissez faire* is by no means assumed as an ideal principle. Thus he takes direct issue with "The Economists."

> They move [he declares] in an arbitrarily chosen environment, where abstractions and suppositions abound and where incomplete facts are grouped in an order which is totally unscientific; and they lead at every moment and in all places to an all-powerful contradiction with the circumstances of practical life.

He even criticizes Adam Smith's fundamental assumptions and boldly declares that his followers have succeeded in copying nothing but his mistakes. An extended discussion of the errors incident to the statistical method as applied to the tariff problem contains much that is valuable. The author concludes that it is the natural interest of Great Britain, Belgium and the Netherlands to enjoy an unrestricted foreign commerce; while Russia, Turkey and the South American republics, with Spain and Italy, are by the temper of their peoples and the natural conditions of their situation and soil precluded from any considerable industrial development. The true interest of the latter, he says, would be to rely upon the great industrial nations for their manufactures and be content with their lot. This argument, while savoring of self-interest for France, is consistently carried out.

A valuable feature of the work is that part devoted to the effect of the protective tariffs in Russia and Italy in attracting an alien population which assumes the control of industrial ventures. There is much good food for thought in this part of the book.

W. Z. RIPLEY.

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The History and Theory of Money. By SIDNEY SHERWOOD. Philadelphia, J. B. Lippincott & Co., 1892. — 436 pp.

This is a University Extension course of twelve lectures, with several addresses introductory to the course, a verbatim report of the discussion brought out by each lecture, and the syllabus placed in the hands of the members of the class. This course must have realized in a high degree the ideal of a University Extension course. The matter seems sufficiently full and well-chosen. The style is clear and interesting. The attitude of the lecturer on controverted points is wisely moderate, being neither rigidly conservative nor aggressively radical. Most of all, the tone of the lectures is thoroughly scientific. The acquisition of truth, rather than the accomplishment of some practical end, is the object aimed at. This is certainly one of the most important elements of the university spirit; and, if the University Extension movement has any good reason for its existence, it is its fitness to extend this spirit among people in general. There are numerous platform lecturers far better fitted to popularize and retail the discoveries of science than is the average university professor. But public teachers of the former class are, almost without exception, too dogmatic and too narrow of view. They love to set forth with absolute assurance striking principles which are in reality of doubtful validity or of quite limited application. The real complexity of truth is sacrificed, that rough and ready *formulae* for the solution of practical difficulties may be furnished. It is naturally to be expected that the university teacher will avoid these faults, since he is cognizant of the numerous limitations which should be set to the application of his happiest generalizations. Professor Sherwood fully satisfies this expectation. He shows himself a true economist, more anxious to develop a scientific, impartial attitude of mind than to furnish ammunition against "free silver" or "fiat money," though, with regard to those practical questions, his views are sufficiently orthodox.

Of the book, considered as a book — something offered to the reading public — one cannot speak in quite such strong terms. It of course does not profess to be of great value to specialists, though such persons will find much to repay a careful reading. Again, it is doubtless not offered as an ideal popular treatise on money. The University Extension lecturer whose class are reading assigned books, properly enough takes much for granted that a popular hand-book should contain. Besides, for such a hand-book, the space given to

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the after-discussions could have been much better used. For similar reasons the work is not adapted for a text-book. In fact the book can be most favorably judged when looked upon as nearly related to the published proceedings of semi-scientific societies. As such it will be primarily of interest to the persons who took the course, though it has considerable value as a popular treatment of the subject, and will in many ways be useful to the teacher or advanced student of economics.

In the statements of fact and in the opinions expressed, there is little to criticise. It may be questioned whether Professor Sherwood is correct in supposing that no bimetallist expects that "absolutely, to the furthest fraction, the ratio could be maintained." De Laveleye and Cernuschi certainly seem to entertain such an expectation. Such is presumably the attitude of all those who hold that under international bimetallism Gresham's law would not operate; since they defend that position by arguing that the underrated metal would have no outlet, *i.e.*, there would be no place where it would be worth more than as money. So de Laveleye distinctly maintains that the price of the precious metals in the mint market would dominate every other possible market; that, "if in all the mints of the world we could obtain for a pound of gold the equivalent of 15½ pounds of silver, and reciprocally, then their equivalent of value would necessarily impose itself on commerce" (*Fortnightly Review*, 36, 120).

F. M. TAYLOR.

Principii di Scienza Bancaria. Da CARLO F. FERRARIS. Milano, Hoepli, 1892. — 445 pp.

Professor Ferraris is one of the most distinguished Italian economists. His numerous works on administration, on statistics, on money, on workingmen's insurance, — all of them of a distinctly Teutonic cast, because of their positive and historical trend, and their decided, although not exaggerated, tendency toward state socialism, — have secured for him an eminent position in economic science. In the present work, one of the most notable productions of the year, we finally have his well-known competency in banking matters turned to good account in a general systematic treatise on the subject.

The book is divided into three parts. In the first the author traces the general theory of credit; in the second he deals with the

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general forms of credit; and in the third he treats of the special forms of credit. In his clear account of the theory, Professor Ferraris distinguishes very much in the German fashion between operations of credit in the wider, the strict and the strictest sense, according as the economic goods with whose transfer we deal are consumable, or fungible, or consist in money. He discusses the nature and value of credit relations in much detail, giving a very instructive comparison of money and credit. The different instruments of credit, which he subjects to a careful analysis, while due to the permanent or temporary lack of money, exert, he thinks, only a negative influence on its value.

In the second part the author examines the operations of the various institutions of credit, and explains the paradoxical fact that these institutions can give credit for a longer period than they receive it. But the advantages which they offer can be obtained only on condition of their observing certain economic and technical laws which are at the basis of every good banking system. The fundamental law is that the nature and combination of the debits must form the guide for choosing the nature and combination of the assets. This latter part of the book will be found valuable not only for the student of theory, but also for the practical business man.

The author then treats of the constitution of the different forms of credit, and of governmental interference. He does not lose himself in the discussion of the theoretically best form of credit institutions, but maintains that almost every one of the various existing kinds have a certain historical justification. He holds that the government should never interfere with the freedom of movement indispensable to economic management, but that it ought to limit itself to laying down general conditions within which the various institutions should act, and such special rules as may be necessary for safeguarding the public interests. Among the general rules he calls attention to publicity and responsibility.

In the third part, which is the most important and which takes up two-thirds of the volume, we see the historical and positive tendency of the author. In fact Ferraris, in devoting several chapters to commercial credit, credit on movables and real property, and agricultural credit, always discusses the actual condition and the facts of the various institutions, and then follows with a criticism of the theory. This method seems logical, and the most fruitful in results. He commences with an account of the system of commercial credit in

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England, based substantially on deposits and bank credits. In his discussion of the provincial banks, the London banks and the Bank of England, many of his pages recall the best work of Jevons and Bagehot. The author takes up the theory of discounts, first on the hypothesis of an isolated market, and then in the case of international exchanges. He discusses the relations between discount and interest, and shows how the former influences the latter. He then treats the question of note-issues. The best basis for a circulating medium is a strong metallic reserve. Securities do not form a sufficiently adequate guarantee, nor are they always quickly realizable. A metallic reserve alone gives a solid and elastic basis. In the case of a single bank the reserve need not be very large, but in the case of a system of multiple banks a more rigid metallic basis must be secured. Ferraris is opposed to the system of fixing any maximum to the issue, as incompatible with the necessary elasticity of the circulation. He prefers on the whole the system of bank monopoly, but is careful to warn us that his discussion refers to the special conditions of Europe, and not to those of the United States, where the situation is quite a different one.

The treatment of commercial credits is completed by a study of internal and international payments, especially through the medium of the domestic and foreign exchanges. The last three chapters are devoted to credit on movables and on real property, and to agricultural credit. In credit on movables the author distinguishes two forms, (1) industrial credit by means of which capital acquires a new productive force, and (2) the "movable" credit connected with general trade in securities and stock-exchange speculation. The author, while demanding a careful supervision over this latter matter, does not want governmental interference with credit on movables as such, because no laws can do away with the speculative character of the transactions. Ferraris studies the various kinds of credit on movables which are of importance to-day, such as those employed in the founding and transformation of industrial enterprises, the emission of loans, the various trust and finance companies, the trade in securities, and especially stock-exchange operations. We do not find any fixed system of regulation; in fact we find the most absolute liberty, almost anarchy in this matter. The great danger, of course, is that credit of this kind always serves as a spur to illegitimate speculation. The author thinks that a strong single bank of issue, such as he advises, will exert a favorable influence on credit on movables.

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As regards credit on real estate, after explaining its nature, Ferraris studies the different systems. In Germany it has assumed three different forms, — combination of land owners, state or provincial institutions guaranteed by the government, and private corporations. Similar forms are found in Austria. In France, on the other hand, there is only a single large private corporation, with a board of directors nominated by the state, and dealing with local credit as well.

In the last chapter, on agricultural credit, the author distinguishes between credit for agricultural improvements and that for the ordinary farming operations. He dwells especially on the systems of Raiffeisen and Wollemborg, as practiced in Germany, Austria, Italy, Switzerland and other countries.

Such is the scope of the present volume, and such the manner in which the theme is treated by the author. The whole treatment gives evidence of profound erudition, which is especially seen in the very full and useful bibliographical notes. At the same time the originality of thought as well as the lucidity and precision of style go to make up a work which is bound to become authoritative and indispensable to students of the subject.

UGO RABBENO.

A History of the Theories of Production and Distribution in English Political Economy from 1775 to 1848. By EDWIN CANNAN, M.A. London, Percival & Co., 1800. — xi, 410 pp.

The subject of Mr. Cannan's book is in one sense indicated with perfect accuracy by its title. It is an examination of the theories of production and distribution set forth by the English writers from Adam Smith to the younger Mill. Their doctrines as to the productiveness of labor, the nature and functions of capital, the law of diminishing returns, the origin and cause of wages, profits, rent — these are followed with scrupulous care in detail, and with unquestionable ability in stating and dissecting the views of each author. Mr. Cannan has mastered everything essential in the literature of the period. His work is scholarly, exact, fully furnished with references to the authorities, and it cannot fail to be stimulating and helpful to all economists.

There is another sense in which Mr. Cannan's book is less faithful as a history. Doubtless it is going too far to require that an historian should approach his subject, as we are told a biographer

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should, in a sympathetic spirit; but surely we may ask that the historian should set forth the merits as well as the defects of the men whom he discusses, and should present a full and fair picture of his subject as a whole. It is perhaps unfortunate that Mr. Cannan has limited himself as narrowly as he has to the doctrines of production and distribution. Value and exchange, money, international trade, are not considered at all, or referred to but scantily, so far as may be necessary for an understanding of the main subject. But there is another limitation in Mr. Cannan's work, of a more essential sort. Mr. Cannan dissects rather than expounds. Not that he fails to state, with scholarly accuracy in the main, the doctrines which he criticises; but his comments are directed to their weak points only. The reader unacquainted at first hand with the writings of the classic writers or their predecessors would rise from this volume with the conviction that all they had written on production and distribution was worthless; that no advance in knowledge was achieved at their hands; that their conclusions perhaps served a temporary purpose in promoting the reform of the Corn Laws and Poor Laws of England, but that as contributions to general theory they had simply to be flung aside once for all.

In truth, the attitude of Mr. Cannan is nothing if not critical, nay hostile. The reader will look in vain through the volume for a syllable of praise or even of respect, while he will find many slighting allusions and acrid comments. Two sentences of Adam Smith's, running over five lines, are noted as "only a verbose method of asserting" something which Mr. Cannan finds himself able to put in three lines. Adam Smith was a fluent writer, desirous of securing for himself a wide hearing; but few of his readers have found him verbose. Ricardo, "like most people who have not had the advantage of a literary education, was apt to think that a word ought to have whatever sense he found convenient to put upon it"; and moreover thought "that a low price of corn means high profits, which, *as became a man of finance*, he assumed to be a blessing." James Mill was Ricardo's "henchman," and "was true to his principle of excluding, so far as possible, everything of human interest from his work." Senior "makes the most monstrous assumptions," and "shows extraordinary incapacity to keep to the point"; Chalmers writes "in his usual turgid style"; Torrens's work is "as long-winded as its title." The younger Mill comes in for more than his full share of this sort of comment. "Clearly there is little but hocus-pocus" in one train of reasoning, where Mill says that labor alone

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is the primary means of production, and concludes that all advances of capitalists are ultimately resolvable into wages. This, by the way, seems to the present writer a sound and important proposition, notwithstanding the contemptuous manner in which Mr. Cannan dismisses it. Again, Mill uses "the most unwarrantable assumptions and the most invalid arguments," is guilty of "a most preposterous arithmetical example," and his chapter on "Fundamental Propositions on Capital" is "a most hopeless farrago of blunders."

Surely there are other things to be said of the contributions which the classic school made to the theories of production and distribution. When we consider what was the stage of economic speculation before the time of Adam Smith and after the time of John Stuart Mill, on such subjects as the division of labor and its consequences, the origin and functions of capital, the significance of interest, the causes determining wages and differences of wages, rent and monopoly gains, we may surely feel some gratitude and express some praise. In truth, economics was virtually a blank on many of these topics before the classic writers; while any current text-book, whether English, German or French, whether "orthodox" or "new school," will be found to contain the gist of their doctrines, with the solitary exception of the wages-fund theory. That these doctrines need some thorough overhauling and reconstructing, and that economic science is now in a stage of healthful transition, no one will deny. To enter on a discussion of those parts of economic theory in which the doctrines of the classic writers still have essential validity, would pass the bounds of this notice; but few would be disposed to sweep them away as unrelentingly as does Mr. Cannan.

If economic study were still in the stage at which it stood in England and the United States a quarter of a century ago, — if Adam Smith and Ricardo were still deified, and Mill's *Political Economy* were still accepted as a definitive statement of all that was worth knowing, — such a book as this might do eminent service. It would awaken, even though rudely, those who thought themselves able to doze in quiet certainty. Even as matters stand, it is an able and stimulating piece of work, however one may differ with the author, not only in temper, but on matters of substance. But as an historical estimate of what was done by the classic writers, it fails. The time has come for a calmer mood and a juster weighing of the merits and defects of the writers of the past.

F. W. TAUSSIG.

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Twenty-second Annual Report of the Massachusetts Bureau of Statistics of Labor. Boston, 1892. — 579 pp.

A tenement-house census of Boston was the work of the Massachusetts bureau of labor statistics last year, and the first installment of the results is embodied in the volume before us. As was to be expected, coming from this bureau, the work is both comprehensive and thorough, and the report an exceedingly valuable one. The investigation was not limited to tenement houses in the narrow sense in which the term is commonly used, but was made to include every "place of residence hired or leased."

The subject is divided into three sections: (1) Tenements, Rooms and Rents; (2) Sanitary Condition of Tenements; (3) Place of Birth, Occupations, *etc.* of Residents in Tenement Houses. Only the first section is printed in this volume.

The present report gives the number of tenements to a house and the number of rooms to a tenement; the number of families having specified numbers of rooms; the population residing in said rooms by sexes; whole number of rooms in all tenements considered, with the average number of persons to a room. These facts are presented in detail by precincts, with summaries by wards and a recapitulation for the whole city. Following this is a series of tables showing the rents paid for these tenements: first, the average monthly rent, according to the number of rooms; second, the classified monthly rent — under $5, 5 to 10, 10 to 15, *etc.* — classified according to number of rooms; third, the number of families paying specified actual rent according to rooms. The customary "Analysis" of the tables completes the book. It is creditably clear though not very concise. The points brought out are of the utmost interest to the city and to civilization in general, although their full value will not be appreciated until the next report appears. It is only to be regretted that more cities have not made similar studies, that more complete comparisons might be possible, as those obtained from the United States census are not wholly satisfactory.

One of the first points of interest brought out by the "Analysis" is the influence of modern apartment houses upon the figures. Thus it happens that ward eleven, precinct one, the Back Bay district, one of the choicest residential portions of the city, shows the highest average number of persons to a rented house, *viz.*, 26.82; while the next greatest number, 17.81, is found in the slums at the North End, ward six, precinct four. The true condition of the population is

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understood by comparing, not the number in a house, but the average number of persons in a room. In the Back Bay district this average is 0.52, while at the North End it is 1.63. Expressed a little differently, in one district two rooms are occupied by one person, while in the other district every two rooms have to accommodate three persons. Even this, however, is not in itself an indication of over-crowding; for it is quite possible for two persons to live very comfortably in one room if they take their meals elsewhere. This is well illustrated in Boston, where 1053 families, comprising 2067 persons, live in tenements of one room, but a large proportion of them were found to be man and wife, who were out at work during the day and did not eat their meals in their rooms. This class, however, constitutes only a very small portion of the population — less than one per cent. As the tenements increase in size (number of rooms) the average number of persons to a room decreases. Tenements of four rooms, which house one-quarter of the population, are found on the average to contain families of between four and five (4.15) persons. As the family will usually consist of man, wife and two or three children, presumably young, a flat with kitchen, sitting-room and two bed-rooms cannot be considered over-crowded, of course leaving the size of rooms and sanitary condition out of the question. As the number of rooms increases the condition seems to improve. Tenements of five rooms and over have on the average less than one person to the room; and since more than one-half the population live in this class of tenements, we cannot from the average for the city predicate an over-crowded condition. It must be remembered, however, that an average implies the same divergence above it as below, and while the average for the whole city is quite satisfactory, there are some congested quarters. This is clearly brought out in the report, and ward six, which is taken as an illustration, is shown to be considerably crowded. Four per cent of the population of this ward live in tenements of one room, and the average number of persons to each such room is 2.67. One-quarter of the population lives in two-room apartments, with an average to the room of 1.87. Thirty per cent have three-room flats and average three to every two rooms. When we reach the four-room standard we find 19.45 per cent of the population, in families of five and six, huddled together in what was before supposed to be a kitchen, sitting-room and two bed-rooms.

The report is an interesting study in social science, and from the statistical standpoint it is an excellent piece of work.

FRANK R. HATHAWAY.

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Criminology. By ARTHUR MACDONALD. New York, London and Toronto, Funk & Wagnalls Co., 1893. — xiv, 416 pp.

From the time when the theory was promulgated that this was the best of all possible worlds, and when the English law was held to be the quintessence of human wisdom, to the present, when there is not a doctrine, however well founded and seemingly ingrained in human nature, that is not subjected to critical analysis, the whole conception of the social manifestations of man has undergone a radical change. Formerly the mere fact that a certain act had been committed which the moral sense of the community (the ethical sense of the preceding age) had condemned through the will of its governing body, entailed as a natural sequence a punishment aiming to avenge the crime. This, it was believed, was the best as well as the only way to meet the attack on society. Nowadays, however, the scientists take from medicine the idea that to cure a disease it is necessary to know its cause, and the attention of the criminologists (the appearance of this neologism is in itself significant) has been chiefly directed to the study of those causes and antecedents which have as a result the modern criminal. I say modern criminal, for as there has been an evolution in society in general, so there has also been a development in the methods of attack upon the social structure. Physical violence seems to be more and more on the decline, owing to the additional safeguards provided by complex political organization. This organization, however, in its turn engenders the resort to trickery, fraud and subterfuge which characterizes criminal activity at the end of the nineteenth century.

Recent investigators have with infinite patience collected a vast amount of data dealing with the physical, moral and social sides of the criminal, the causes which have given rise to the class of viciously inclined and the origin of the environments which call those inclinations into play. Among these collectors in the domain of criminology, the one who has actually created a new school of investigation is undoubtedly Dr. Cesare Lombroso, of the University of Turin. His *L'Homme Criminel* (Turin and Paris, 1887) has given the world a great mass of statistics and observations from which he deduces the criminal type. He maintains that some men are born criminals as others are born blind or scrofulous, and in support of this thesis he marches up column after column of figures, exhibiting such apparently diverse and unrelated facts as the size of the skull, the measurement of the brain, the color of the eyes and hair, the position

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of the ears, the shape of the jaw, the shape of the nose, even the handwriting and sensitiveness to pain. All these have, according to Lombroso, significance in pointing to the atavistic origin of the criminal. He has, in fact, a physical explanation for all criminal manifestations. The statistics which he has adduced in support of his hypothesis (for that it still remains) have been assailed on all sides by eminent criminologists like Joly, Topinard, Ferri and Marro. As between the evidence and the arguments on the two sides the student can as yet only suspend judgment, feeling that the science is in its elementary and largely empirical stage, and that generalizations in this field are very dangerous and misleading.

Mr. Macdonald, the author of the book under review, is a disciple of Lombroso. In the first part of his book he gives us mainly a recapitulation of the doctrines and facts found in Lombroso's works; the recapitulation being, however, so very much less extensive than the original work that the convincing force of the figures is necessarily much diminished. Nor can it be said that anything more than a mere indication of a method of ascertaining facts by the skillful questioning of criminals and their reformatory and prison records has been given by the few actual cases cited at very great length by Mr. Macdonald in the latter half of his book. The facts acquired by questioning criminals must be examined with a great deal of caution; the motive for accurate and truthful answers is altogether wanting and the inability of the criminals either to think or express their thoughts correctly must always be a great obstacle to the acquisition of knowledge by these means.

In his short chapter on criminal hypnotism, the author does not seem to question the possibility of criminal suggestion, but appears to think that there is little doubt that the criminal thus hypnotically created would by his own action betray the hypnotist who had induced the criminal state of mind. That, to say the least, is merely hypothetical and would hold true probably in a few cases, but in many others where the motive could more easily be ascribed to the actual wrongdoer, the creator of the wrongful impulse would be forgotten, and all the more surely, had the hypnotiser taken the probable precaution of secrecy in his operations and of suggesting to the victim in the hypnotic state entire forgetfulness of the operator.

It is a pity that Mr. Macdonald has not devoted more space to the elaboration of his chapter on criminal contagion, especially of that part which treats of the recital of peculiarly atrocious crimes and the influence that the reading thereof has on the weak and criminally

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inclined. The morbid interest which the description of crime and criminals arouses is recognized by many newspapers, who vie with one another in exciting a maudlin pseudo-pity for the criminal, and through the influence of sympathy thus induced, create in the weak the desire to emulate the example so strikingly described. If Mr. Macdonald, by expanding this chapter, could show the great number of persons thus influenced by the daily press, he might create a public sentiment strong enough to prove to the news gatherers and column writers that prize fights and brutal murders are not the most desirable objects of interest in life.

The bibliography at the end of the book, extending as it does over one hundred and thirty pages, is very useful to the student, and for that fact alone the book would find a place on the scientist's book-shelves.

S. H. SCHWARZ.

Tools and the Man: Property and Industry under Christian Law. By WASHINGTON GLADDEN. Boston and New York, Houghton, Mifflin & Co., 1893. — 308 pp.

While noble attendants are disputing whose prerogative it is to pull on the king's stockings, his majesty must wait barefooted. There are certain things which that modern monarch, the working part of humanity, needs to have done for it; but persons most inclined to render the services are often warned not to do it, lest they trench on others' domains. The economist must keep out of ethics and the moralist out of economics; and, therefore, the relation between "property and industry" and "Christian law" are tardily and imperfectly studied.

The thing to be done is definite enough. What is the actual economic system, and how does it work? This is an economic inquiry that needs to be answered. What would a morally perfect system be, and how would it work? This is a question of practical ethics. How may the actual system be made to resemble more closely the ideal one? What are the principles governing true industrial reform? What rules shall we establish if we are to make the working world better than it is? What natural forces are at work tending to make it better than it is, with no reformatory effort on our part? These inquiries are in the domain of economic ethics; but if we get our ideals ready-made from the hands of the ethical philosopher, the work that remains for us will be economic. It ought to be possible, first, to do the needed work, and, secondly, to do it in a legitimate capacity and without disputes as to prerogative.

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Dr. Gladden's book undertakes to do some of this work, and is unusually successful. It contains the substance of lecture courses delivered at the theological seminaries of New Haven and Meadville, at Cornell University, and elsewhere. It applies moral tests to the institution of property, the system of wage earning, the process of competition and the existing organization of society. It inquires how the industrial system can be Christianized.

It incidentally determines how the needed work cannot be done. It finds socialism, in its pronounced forms, wanting, and detects the injustice of seizing the value that resides in land honestly acquired. If the term socialism be made to signify any extension of the activity of the state into regions now abandoned to individuals, then the world is rapidly becoming socialistic and ought to become so.

Dr. Gladden finds many points at which society may be made more Christian. The wage contract may be made more just by a proper balancing of the contending forces. The plan of dividing the fruits of industry may be improved by merging the person of the wage earner in that of the profit and interest receiver. There may be profit-sharing and various other approaches to full coöperation; and there may be much coöperation of the complete kind. There may be numerous other measures for tempering the harsh action of the system under which we live.

The book will not fail to clarify the view of those who are willing to work for society and are seeking direction.

J. B. CLARK.

Gesetz und Obrigkeit. Von P. KLOEPPEL. Leipzig, Verlag von C. L. Hirschfeld, 1891. — 129 pp.

The practical end of this work is to justify the exercise of an independent ordinance power by the chief of state in the modern constitutional monarchy. The monograph is a contribution to the unending discussion among German publicists as to the relations of the legislative and the administrative power. A basis for the solution of the immediate problem is provided by the author in a review of the historical process by which the various conceptions of law and rights have been developed and differentiated. In Hellenic philosophy he finds the complete notion of a broad jural order determining social relations — *νόμος*, *jus*, *recht* — but no idea of rights in the subjective sense. This latter conception was worked out by the Roman law through the *legis actiones;* but subjective rights were regarded merely

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as an outcome of the general legal order. The praetors as well as the *comitia* only applied, but did not originate, *jus*. When, however, the whole legislative as well as judicial authority became concentrated in a single individual, the fact that he granted *actiones* was made the basis of the theory that he created the rights and the law on which the *actiones* rested. Here originated the doctrine that will is the essential element in law, and that all law, whether *jus* or *lex*, is command. Supported by the Christian conception of an all-powerful God guiding the universe by arbitrary decrees, this theory of law dominated the middle ages, was transmitted through the nominalists to the Protestant reformers, became the speculative basis of the absolute monarchy and of the social-contract theories which overthrew it, and persists to-day in the so-called school of positive law. For this "byzantinisch geschulte Rechtswissenschaft," as he calls it, the author has little respect.

Under this theory of the nature of law, the sovereign in a state is that person or body of persons whose will is the sole source of law. It is hardly possible in this age to claim for any monarch such a character. But if full sovereignty be ascribed to the popular representative bodies that have everywhere arisen, the monarch is relegated to the position of a mere ministerial agent of those bodies — executive in the strict sense. But such is not in fact the position of the German constitutional monarchs. They are in a sense coördinate with the representative bodies. The theoretical basis of their position is only to be found in the doctrines of the historical school of law and political science. This is the basis assumed by Mr. Kloeppel. Law is not made; it grows. The state is not created in a moment by the fiat of a sovereign; it unconsciously develops out of conditions of physical and moral nature. In the jural consciousness of the people of a given state is to be found that state's law in the broad sense (*recht*, *jus*). An essential characteristic of any state is a recognized authority (*Obrigkeit*), interpreting and applying the law as existent in the popular consciousness. Originally there is no distinction of legislative, executive and judicial functions. Nor is this distinction logical in later times; for the work of so-called legislation is not in any true sense the origination of law (*Recht*).

Das Gesetz ist ein Ausspruch nicht darüber, was Recht sein, sondern was als Recht gesprochen werden soll; es ist eine Anweisung nicht für den Einzelnen, nach welcher er sein Thun und Lassen einrichten, sondern für die Obrigkeit, nach welcher sie das Recht im einzelnen Falle finden soll. [Page 75.]

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Legislation, then, is merely interpretation of the law in the form of instructions to officers endowed with state authority. These instructions were in earlier times given solely by the monarch. In later days popular feeling has demanded that from time to time the interpretation of the law should be shared in by bodies of popular representatives. In some cases it has been sought to make this function exclusive in the representative body. But there must always remain a vast sphere of activity in which discretion must be exercised by the so-called executive authority. This authority then must declare what is law and must be guided in its declaration by the same principles that guide the so-called legislature. The legislative and executive branches of government, in short, are only distinct organs for the same general purpose — to voice the jural consciousness of the people of the state. Statute and ordinance must alike harmonize with this consciousness. If the two come at any time in conflict, popular feeling must decide between them. Even where the constitution of a state intends to give all ordinance power as well as all statute-making power to the representative body, there come occasions when the executive feels bound to disregard a statute — to interpret, in other words, the popular consciousness for himself. Hence indemnity laws, as in Great Britain and the United States.

While there seem to be evidences in places of some confusion in the author's mind due to the ambiguity in the word *Recht*, yet the doctrine presented in the book is on the whole sound and satisfactory. In maintaining the rights of the administrative organ, the author by no means identifies it with the state; he merely feels unable to shut his eyes to the part played in the development of every state by authority.

Die Obrigkeit ist auch nur die staatbildende Kraft, nicht für sich der Staat: dieser ist die unter der Obrigkeit geeinte Gesammtmacht nicht einer leeren Personenmehrheit, sondern eines von eigenartigem, Sittlichkeit und Recht bildendem Gemeingefühle durchdrungenen Volksthums. . . . Wie die gesunde Staatsbildung von oben ausgeht, aber ihre Vollendung erst findet wenn die Obrigkeit mit dem Rechtsgefühl der Unterthanen sich zu einer sie selbst bindenden Ordnung zusammenschliesst, so geht die gesunde Rechtsbildung von unten aus, aber findet ihre Vollendung erst in dem rechtsetzenden Walten der Obrigkeit. [Page 103.]

There is good history and good political science in this passage.

Wm. A. Dunning.

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Studien zum Aeltesten Familienrecht. Erster Teil: *Mutterrecht und Vaterrecht.* Erste Hälfte: *Die Grundlagen.* Von Dr. LOTHAR VON DARGUN, Professor an der Universität Krakau. Leipzig, Duncker & Humblot, 1892. — 8vo, 155 pp.

The material for the comparative study of legal evolution has become immense. The earliest conditions of civilized nations — or at least the conditions which apparently obtained before their civilization — have been elucidated by philological and institutional research, and the customs of uncivilized or semi-civilized tribes and peoples in all parts of the world have been more or less intelligently described by numerous observers. In the field of the family the material seems relatively complete. The more recent investigations have ceased to present any forms of family organization or systems of determining kinship that are really novel: they furnish us only with fresh examples of forms and systems already known. The time seems ripe, therefore, for more careful and profound study of the whole subject. This is the work undertaken by Professor von Dargun; and it is carried out in the first instalment of his treatise with unusual keenness of analysis and with interesting results.

In his view the differences of opinion still existing as to the primitive type of the human family and the successive stages of its evolution are due to the failure of most writers to distinguish between power and kinship. These authors who, like Letourneau and Starcke, discover in the lowest stages of social development a distinct supremacy of the man over wife and children deny the priority of mother-right or relationship through the female line. Those, again, who find clear traces of the general priority of mother-right deny the antiquity of the patriarchate. According to von Dargun, there is here a confusion of things which are indeed causally related, but which are nevertheless distinct; and a general agreement will certainly be attained as soon as the scientific world learns to separate power and kinship and to admit that paternal authority may exist without agnatic relationship, and mother-right without matriarchal developments.

Without denying or affirming the possible priority of hetairism or absolutely indiscriminate sexual relations, the author maintains that the earliest demonstrable organization of the family is about and under the man.

> We picture to ourselves the protoplasm [*Urzelle*] of the family . . . as follows. Within the . . . horde [*Menschenrudel*] . . . smaller separate

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groups are formed, the central point of which is usually a man. This man puts himself in possession of one or more women ; commands their services of whatever nature ; and disposes both of them and of the children borne by them, whether the latter are really his children or not. [Pp. 38, 39.]

But this power is not yet a true patriarchate. It is merely a *de facto* power. It exists only so long as it is exercised. If the man puts away his wife, his marital and paternal power is at an end. When the children grow strong enough to shift for themselves, they are no longer in any sense his children. They may even ignore their relationship to each other. The idea of kinship is of later development.

From this primitive power of the man, as it becomes more durable and hardens into the patriarchate, *may* proceed directly a theory of agnation or kinship through the male line. Or kinship *may* conceivably be recognized in both lines. But neither of these things commonly happens at the outset. Even where paternity is certain, which is far from being commonly the case, the bond of blood between mother and child is far more obvious to the primitive mind than is the bond between father and child. The earliest system of kinship is therefore almost always uterine. With the full development of this system there may appear matriarchal ideas and usages: rarely in the form of a real household authority of the granddame; more often in the form of a right of the mother's brother or her maternal uncle to protect her and her children against the husband and father. But exclusive mother-right, as a system of kinship, is demonstrably compatible with exclusive marital and paternal power.

But as the recognition of uterine kinship tends to produce matriarchal ideas, so conversely the exercise of paternal power tends to produce a new theory of kinship; and this latter tendency is far more energetic. Mother-right sporadically develops into matriarchate, but patriarchate, once firmly established, always tends to break down mother-right and to develop agnatic relationship. The patriarchal household is indeed based on power alone, and the actual paternity of the children is at first immaterial. But in proportion as marital authority becomes more complete and durable, paternity becomes more certain, and the new theory of kinship grows in importance. Men cease to say "The cock lays no eggs," and begin to use similes of the seed and the soil. Still, the paternal power and the new agnatic kinship remain essentially juristic conceptions. The father is father, not on physiological grounds, but because of his right over the mother. There is thus no immediate breach with the theories of mother-right, but rather a new departure from its recognized principles.

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So far von Dargun. His theory is in itself plausible, and it is supported by a great array of evidence. But it seems incomplete. Why, we may ask, does father-right so often thrust mother-right partially or completely aside? How did the Romans, for example, come to adopt agnation as the exclusive system of legal kinship? Why have other peoples given preference to the male line in inheritance? These are the facts which von Dargun's explanations do not explain. From his presentation of the causes of father-right we should expect the immediate appearance of *Elternrecht* or the modern system of kinship, which attributes equal importance to the male and female lines of descent. Other writers have found the missing explanation in the influence of the *gens* or clan. As Post, for example, has pointed out, the clan is based on the theoretic unity of blood, while the family is regularly based on the union of different bloods. With its theory the clan cannot possibly recognize more than one kind of kinship, and its system must be either exclusive mother-right or exclusive father-right. It is therefore the clan that really determines kinship. Von Dargun hardly alludes to this most important theory. That he does not accept it, however, is indicated on page 45, where he clearly assumes that clan organization is not the cause but the result of family organization.

In tracing the evolution of the patriarchate and of father-right the author rightly lays much stress upon wife-purchase, but he draws what seems to be an untenable distinction between the legal results of wife-capture and wife-purchase. In his opinion wife-capture creates only a *de facto* power, while wife-purchase creates a legal right, first over the wife and secondarily over her offspring. This is a distinction which cannot have been felt in really primitive society. That authority over wife and children develops on the same lines with property right in general; that in fact marital and paternal rights are originally indistinguishable from other property rights, — this von Dargun himself recognizes. But simple appropriation, recognized and respected by the community, is the original basis of all property right; and it is only where some sort of property right is established that sale is conceivable. In the evolution of the family, wife-purchase from the girl's father implies that paternal rights are already recognized, for otherwise the father has nothing of which he can dispose. Von Dargun might indeed respond that he disposes of a *de facto* power; but a *de facto* power which is alienable is indistinguishable from a right. Paternal authority therefore antedates wife-purchase; and von Dargun's statement that wife-capture is not a direct cause

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of father-right, but only prepares the way for it, is demonstrably illogical. The fact that *after* wife-purchase has become usual, wife-capture within the tribe does not establish paternal authority over the children, is perfectly intelligible: at this stage of social development wife-capture becomes a distinctly wrongful act which cannot create rights; it becomes wife-stealing. But this fact does not sustain the contention that wife-capture could not establish marital and paternal rights at a time when the mode of appropriation was regarded as right and honorable. Here as elsewhere the author's argument is incomplete because he has postponed, for the present, all discussion of endogamy and exogamy.

The book goes far to clarify the discussion of a number of very complicated and difficult questions, and its further instalments will be awaited with interest.

MUNROE SMITH.

Alt-Arisches Jus Civile. Erste Abtheilung. Von Dr. B. W. LEIST, Professor an der Universität zu Jena. Jena, Gustav Fischer, 1892. — 8vo, 531 pp.

Professor Leist has resumed, with somewhat tedious restatements and repetitions, the line of investigation pursued in his *Gräco-Italische Rechtsgeschichte* (1884) and his *Alt-Arisches Jus Gentium* (1889). His attempt is to reconstruct the common Aryan beginnings of all Indo-Germanic legal systems by a comparison of Hindu, Greek and Roman institutions, with occasional excursions into Armenian, Persian, Celtic and German usages and laws. The common Aryan basis, as he shows, is rather religious and moral than legal: it is the divinely ordained system which the Hindus called *dharma*, the Greeks *themis*, and the Latins *fas*. It is this common divine law which Professor Leist rather oddly calls *jus gentium*. The term *jus civile*, on the other hand, he uses in a strictly Roman sense, to designate the local systems of law which were worked out in the ancient city-states of Greece and Italy. *Aryan Civil Law* is therefore, according to his own theory, a misnomer, for the Aryans never had a common civil law. All that they had in common was a religious law, in which, however, were imbedded many germs of the various civil laws which were developed independently centuries after their separation into distinct nationalities.

The present work, which will embrace two more volumes, is primarily an attempt to reconstruct the Roman *fas*, of which our knowledge is unfortunately very scanty, by the aid of *dharma* and

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themis, and to show the Aryan origin of much of the Roman *jus civile*. The present volume deals mainly with the first of these problems, and therefore contains almost no civil law, Roman or Aryan. The later volumes will treat respectively of the "development of the Roman *civilis ratio*," and of the Roman scheme of legal acts and legal sanctions. In them, the author expects to derive much assistance from the older city-laws of Greece, and particularly from the newly discovered law of Gortyn.

In this work, as in its predecessors, Professor Leist sharply distinguishes his line of investigation — which, as he insists, is purely legal-historical — from the broader field of research which is commonly called comparative legal science. He is not concerned with the evolution of human customs and laws as a branch of ethnological or sociological science, but with the development of Aryan law as a matter of institutional history. His anxiety not to be included among the comparative legal scientists is due to distrust of their methods and disbelief in the correctness of their conclusions. He denies, for example, that there is any trace in Aryan law of primitive mother-right, and he obviously disbelieves in its existence at any period in any decently moral community. On the other hand, he does not find that agnation is the original Aryan system of kinship, but holds that relationship was traced through both lines, the male and the female. He therefore asserts, for Aryan law at least, the priority of that system which most students of comparative legal history regard as the most modern. On their part the adherents of the comparative school assert that much of Professor Leist's work is vitiated by the erroneous assumption that the *dharma* of the Sūtras is primitive Aryan law. They maintain that the social relations of India, at the period of the Sūtras, had reached a comparatively advanced stage of development, and that the Sūtras themselves represent centuries of sacerdotal construction and interpretation which practically amount to legislation.

In the forthcoming volumes of *Aryan Civil Law* Professor Leist will return to the field in which he did his earliest and best work, and in which he is recognized as an authority — the field of Roman legal history. That much light may be thrown upon its dark places by a comparison with other systems, and in particular by the analogies of Greek civil law, will not be disputed — least of all by his dearest enemies, the comparative legal scientists.

M. S.

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BOOK NOTES.

In *A Brief History of Panics and their Periodical Occurrence in the United States*, by Clément Juglar, "Englished and edited" by DeCourcy N. Thom (Putnams, 1893), the translator has taken a few chapters from the French original, which is of wider scope, and given a very free rendering, interspersed with his own sentiments. The value of the extract is not very apparent, for so far as the United States is concerned the story has been told repeatedly, and Mr. Juglar's very fragmentary account neither adds to our knowledge nor gives as clear a statement as is to be found in several other works. As a popular account of the evils of overtrading, the *Brief History* may serve its purpose, but to the student it will not be of much use.

A former high official of the United States, Mr. W. L. Trenholm, modestly states that his work on *The People's Money* (Scribners, 1893) is meant not for the learned, or for those who are versed in economic literature, but for the large number of plain people who desire to get some practical ideas on the subject. The work is pleasantly and clearly written, and contains a good statement of some of the main principles of monetary science. But even the fact that the book is written for plain people does not excuse such statements as that John Law originated the idea that articles used as money must have a value in barter, or that the so-called Gresham's law was *first* pointed out by Sir Thomas Gresham, or that utility is a physical relation and value an abstract relation. The author avoids the discussion of bimetallism for the curious reason that he desires to consider only "those principles which take their rise in the nature of things."

In a convenient little volume entitled *State Papers and Speeches on the Tariff*, and published by Harvard University (Cambridge, 1892), Professor Taussig has collected some of the chief documents bearing on the free-trade discussions up to the middle of the century. The book contains such familiar and valuable papers as Hamilton's Report on Manufactures, Gallatin's Memorial, Walker's Report, and Clay's and Webster's speeches in 1824. This publication in the present form will be of no slight aid to students and teachers.

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Mr. George Clare has shown that Goschen has not spoken the last word on foreign exchange, for in *The A B C of the Foreign Exchanges* (Macmillan, 1893) he has not only put together what is, on the whole, the best primer of the subject in existence, but he has supplemented in several important points the larger work of Goschen. Mr. Clare tells us that he gained his experience at first hand, and he writes primarily for the business man. The resulting necessity of clear statement and practical illustration makes the little work peculiarly valuable for the student as well. With its help many of the perplexing problems of every day occurrence in banking and commercial practice can be easily solved. So *e. g.* the problem of the silver exchanges with India, and the different meanings of "high" and "low" rates in different countries.

Mr. Arthur Raffalovich continues his survey of the financial condition of the important commercial countries, begun in 1891, in *Le Marché Financier en 1892* (Paris, Guillaumin, 1893). A preface discusses the rôle of speculation in general, and gives an historical sketch of the legislation against futures. The body of the book takes up in turn the stock exchanges of Paris, London, Berlin, New York and Vienna, and the general condition in Italy and Russia. We also note a full and valuable account of the proceedings of the Brussels International Monetary Conference, to which the author was a delegate. An appendix deals with the projected French tax on stock-exchange operations. The notices in general are timely and convenient for reference.

In December, 1892, as the result of a call issued by President Angell, the Michigan Political Science Association was formed at Lansing. Both at that meeting and at the second session, held in February at Ann Arbor, a number of papers were read, most of which have now been collected in the *Publications of the Michigan Political Science Association*, No. 1 (May, 1893). The volume contains two interesting essays by Judge T. M. Cooley, the one on "State Bank Issues in Michigan," the other on "Federal Taxation of State Bank Issues." There are also included an account of the organization and first two meetings of the association, the address of the president, Judge Cahill, and papers and discussions on the bank-note circulation, the Interstate Commerce Act, and the suggested election of United States senators by popular vote.

Charles Frederick, Margrave of Baden, has always been famous in the annals of political economy as the only potentate who attempted to put into practice the Physiocratic theory of the single tax. His

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interesting correspondence with the leader of that school has just been published in two volumes by the Baden Historical Commission, under the title: *Carl Friedrichs von Baden Briefliche Verkehr mit Mirabeau und Dupont*, edited and provided with a preface and introduction by Carl Knies (Heidelberg, Winter, 1892). The correspondence is entirely in French, and throws some light on several of the obscure points in the history of the Physiocratic movement. The preface and introduction by Professor Knies, the Nestor of the historical school in Germany, will be a welcome proof to his former students that his mind has not lost the acuteness of former years. The introduction gives a masterly sketch of the fiscal and economic conditions which led at once to Physiocracy and the French Revolution. Mirabeau and Charles Frederick are treated at some length, but Dupont has been so fully discussed in the recent work of Schelle (see POLITICAL SCIENCE QUARTERLY, IV., 176, March, 1889) as to render any further treatment unnecessary.

The latest number of Elster's Staatswissenschaftliche Studien is a doctor's dissertation of Albert Hahl, *Zur Geschichte der Volkswirthschaftlichen Ideen in England gegen Ausgang des Mittelalters* (Jena, Fischer, 1893), written under the guidance of Professor Schanz. The author has taken eleven essays, from the middle of the 15th to the middle of the 16th century, and has classified their contents according to the various subjects of economic interest of the time. It cannot be said, however, that Dr. Hahl has really added much to our knowledge. We simply have in bare outline what Ochenchowski, Schanz, Cunningham (only the first edition of whose work the author seems to know) and Ashley have told us much more fully. The essay will nevertheless be interesting to students of the history of economic doctrine.

Starting out with a bias in favor of government ownership of land, Mr. Harold Cox was led by further study to question its expediency. In *Land Nationalization* (London, Methuen & Co., 1892), one of the series on Social Questions of To-Day, he has attempted to discuss some of the arguments involved. The bulk of the work is a popular condensation of the history of land owning and land taxes in England. The author's original contributions to the general subject are three in number: a discussion of the incidence of local rates, which is not very penetrating, and which concludes with the demand for a local income tax; an examination of Henry George's scheme, which is pronounced illogical as well as an aggravation of the evil; and the suggestion that before proceeding in the direction of state purchase

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of land, the existing system of individual ownership be improved to the uttermost, mainly through endowing the public with an extended right to use the land for purposes of recreation.

In another volume in the same series, entitled *A Shorter Working Day*, Messrs. R. A. Hadfield and H. de B. Gibbins have sought to supplement Webb & Cox's *Eight-Hour Day* by bringing the history of the movement in England to the close of 1892. Mr. Hadfield is a large employer, who gives an account of some practical trials, but whose other remarks are nothing but a repetition of his colleague's views. A valuable chapter is inserted on the Australian experiments, taken in great part, with acknowledgments, from a German monograph of Dr. Stephan Bauer. Some of the inferences are not very valuable, as *e. g.* the statement (page 29) that the actual working day in the middle ages could not have been more than eight or nine hours, because More, in his *Utopia*, puts the ideal working day at six hours! This is neither logic nor history. The authors, although enthusiastic, do not regard the eight-hour day as a panacea. To them it simply means an hour or two more leisure for the workman, — and that is enough.

The *Almanach de la Coopération Française* (1893), published by the *Comité de l' Union Coopérative des Sociétés Françaises de Consommation*, is a *multum in parvo* for coöperators. The introductory matter and two of the biographies included in the book are by Professor Charles Gide, and eminent men are among the contributors. In place of the names of patron saints of an ordinary calendar there have been substituted those of "the twelve apostles of coöperation." Four of these are French, namely, Fourier, Buchez, Leclaire and Godin. Four are English — Owen, Maurice, Vansittart-Neale and Holyoke. Two, namely, Schultze-Delitszch and Raffeisen, are from Germany; and from Belgium and Italy are selected Vigano and Caesar de Paepe. There will be little fault found with the selection. The *Almanach* contains a list, complete to the present date, of French coöperative societies, and a catalogue of societies of other countries. It traces the history of the chief experiments in France, and gives the more important general statistics of the coöperative movement.

A number of suggestive discourses and essays, by Professor William Cunningham, have been collected in a slight volume bearing the title: *The Path Towards Knowledge; Discourses on some Difficulties of the Day*. Among the difficulties are those connected with the relations of marriage to the law of population, with socialism, with the ethics of money, charity, education, faith, *etc.* Of the

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author's qualifications to deal wisely with the economic aspects of these questions, it is not necessary to remind the readers of this journal; and we need add only that he here deals with them avowedly "from the standpoint of one who has tried to make the Christian faith the guide of his own life, who has found that it helps him to see more clearly in many perplexities, and who therefore believes that it will prove a true guide to others if they will follow its leading."

The standard of Sonnenschein's Social Science Series has not been elevated by the addition of H. M. Hyndman's *Commercial Crises of the Nineteenth Century* (1892). Where the work is not made up of extensive and very bad translations of uncredited excerpts from Wirth's *Geschichte der Handelskrisen* it presents a fragmentary description of the symptoms which have attended the chief commercial panics of the century. But even here the facts have been either tinged or distorted by the author's well-known socialistic views. After subjecting to a destructive criticism the various theories that have been advanced as explanations of crises, he concludes that such phenomena are inherent in the very existence of "the capitalist system of production;" that they arise from "an antagonism between the social form of production and the individual form of appropriation of commodities." The solution which he suggests is nothing more nor less than socialism pure and simple, attempt to disguise it as he may by the terms "socialization," "social organization," "organized coöperation."

Factory Act Legislation (London, Unwin, 1892) is a Cobden Club Essay by Victorine Jeans. It sketches briefly the history of the acts and shows how they have been vindicated both economically and socially. Neither production, wages nor profits have been reduced. The introduction of better methods and improved machinery has been stimulated, while the laborer has gained shorter hours and better conditions of working. The book gives a qualified approval of the eight-hour day.

Two important publications on the subject of "officialism" (*cf.* POLITICAL SCIENCE QUARTERLY, VIII, 58, March, 1893) have recently appeared. One is the *Further Report of the Special Committee of the Council of the Incorporated Law Society on Officialism*, the other the *Report on Companies' Liquidation* by the inspector-general of that department of the Board of Trade. The report on officialism is a review of the subject to date under four heads: (1) as to officialism generally; (2) as to the bankruptcy and winding-up department; (3) as to compulsory schemes of the land-registry office; (4) as to

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the proposals for the establishment of a public-trustee department. The *London Times*, in commenting on the report, says: "Those who have described the Incorporated Law Society as the best organized and most intelligent trade union in the country, will point to this pamphlet as a fresh proof of its zeal for the interest of its members." The report of the inspector-general, on the other hand, presents the side of officialism so far as it concerns the winding-up of joint-stock companies. His figures are startling. During the year 754 companies were wound up with a loss to stockholders of about £20,000,000, and of the companies so wound up apparently the majority had not been in existence over three years. The inspector-general declares that of these companies there is scarcely one of which it could be said that the objects of the company were reasonable, that its promotion and management were honest, and that its failure was due chiefly to misfortune.

In a huge volume of over a thousand pages, entitled *The Story of our Post Office* (Boston, A. M. Thayer & Co., 1893), Mr. Marshall Cushing has collected a prodigious amount of interesting matter connected with the organization and working of what he calls "our greatest government department." Every possible phase of the subject receives full treatment. Although the popular character of the work is manifest in the numberless photographs and anecdotes, readers of a more serious vein will find it replete with valuable information.

Every year sees the appearance of handsome, substantial books, with which no fault can be found except that they add nothing to our knowledge and are written with undue pomposity. They doubtless serve a useful purpose; they appeal to that large body of prosperous persons who regard books as furniture, and who like to be impressed by an author's long sentences and fine words. This is the public addressed by Mr. W. Carew Hazlitt's ponderous volume on *The Livery Companies of the City of London* (London, Sonnenschein; New York, Macmillan; 1892). Besides the coats of arms of the various companies, some lists of 17th century pamphlets and broadsides, and a few engravings of buildings and plate, there is hardly anything to be found in it which is not in the *Report of the Livery Companies' Commission* (1882), Herbert's *Livery Companies*, and a few other easily accessible authorities. The author is an antiquary, it appears; he certainly is not a historical scholar. His conception of past conditions is of the vaguest; his style is awkward and obscure; and he gives no references. It would be

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useless with a work of this kind to enter into detailed criticisms which the "general reader," who is alone likely to look at the book, would not care for, and which the serious student would not want.

M. Levasseur's *La France et ses Colonies* (Paris, Chas. Delagrave, 1893) reaches completion with its third volume, devoted entirely to the colonies. The whole work is an exhaustive description of the physical geography and the economic and political institutions of France and its possessions, based on natural science, history and statistics. While for the most part an encyclopædia of facts, the work contains some interesting generalisations as to the influence of soil, climate, topography, *etc.* upon the development of a nation. France is said to be the third colonial power in the world, its domain covering eight million square kilometers, with a population of seventy-three million persons. This includes, however, five and one-half million square kilometers where French influence is *nulle* and 700,000 square kilometers where her influence is not firmly established. A copious index makes the book very valuable as a gazetteer.

Del Patronato degli Emigranti in Italia e all' Estero (Rome, 1893), by Dr. Egisto Rossi, is a valuable pamphlet published by the Italian Geographical Society, giving an account of the laws and institutions for the regulation of emigration and immigration in the principal countries of the world. The object of the study was to devise means for regulating and protecting Italian emigration, which has lately become so important. The author is admirably qualified for his task by his previous work for the geographical society in this line and by his intimate acquaintance with the United States. The present essay contains a great variety of information useful to the student and might well be translated into English. On page 49 a slip of the pen ascribes 6,000,000 immigrants to the United States, 1820–1890, from "England." It should be "Great Britain."

In this connection, the *Arrivals of Alien Passengers and Immigrants in the United States from 1820 to 1892* (Washington, 1893), a part of the quarterly report of the bureau of statistics in the Treasury Department, series of 1892–93, deserves notice as an exceedingly convenient summary of the statistics for the United States. Besides the usual tables of immigration the report contains special statistics of the amount of money brought by immigrants, the number of passengers departing from the United States, the distribution of the foreign born in the United States, immigration into other countries of America and Australasia, 1820–1892, and a reprint of our immigration laws and regulations, including the act of March 3, 1893.

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To the convenient *Jahrbuch für das Deutsche Reich* we have now to add the *Statistisches Jahrbuch der Schweiz*, published by the statistical bureau of the federal Department of the Interior at Berne. It renders easily accessible the statistics of Switzerland. Equally welcome is second volume of the *Statistisches Jahrbuch Deutscher Städte*, (Breslau, 1892), edited by Dr. Neepe, with the co-operation of Böckh, Hasse, Edelmann, Würzburger and others. It contains statistics of forty-three out of forty-seven German cities having over 50,000 inhabitants each. The information is arranged under twenty-one heads, each of which was worked out by a competent official through special schedules sent to each city. Thus uniformity and completeness were secured to a very high degree. That such a method was possible speaks well for the efficiency of the municipal statistical bureaus and for the scientific zeal of their officers.

President Andrews of Brown University has performed a good service for historical science in this country by publishing an excellent translation of J. G. Droysen's *Grundriss der Historik* under the title, *Outline of the Principles of History* (Ginn & Co., 1893). The translation is made from the last German edition and includes, in addition to the *Outline*, the author's criticism of Buckle and his articles on "Nature and History" and "Art and Method." Prefixed to the translation is also a biographical sketch of Droysen by Dr. Hermann Krüger. The treatise itself was in form scarcely more than lecture notes. The translator has made it clearer and more readable by expansion and occasional paraphrase. Droysen's utterances are as profound and sometimes as obscure as those of his master, Hegel. But this little book contains as much true and inspiring philosophy as can anywhere be found packed into the same space. To its author, history is nothing less than the moral evolution of humanity; in its material it is the record of that evolution. Everything which concerns this development belongs within the domain of history. It is investigation by means of the discovery and criticism of the sources, whatever they may be, and by thought or interpretation. The last is the most important part of the process, and success in it makes the true historian. It depends in the largest sense on the moral endowments of the investigator, out of which arises his capacity to sympathize in and so to understand the experiences of other men and times. In the local and partial he must always be seeking the general. History in the true sense is universal. The historian must be filled with the idea of human progress. Though untiring in his search for truth, he should be

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an uncompromising idealist. Those who look to Droysen for a defense of the notion that history is an exact science will be disappointed.

Mr. Caleb William Loring was much shocked a few years ago by Henry Cabot Lodge's opinion that Hayne had the right of the argument in his famous debate with Webster. Mr. Loring has accordingly published, under the title *Nullification and Secession* (Putnams, 1893), an account of various facts in our history which he thinks show that Mr. Lodge was wrong. The book contains nothing that is new to students of the constitutional history of the United States. It is a good "old line Whig" document, teeming with ideas that were prominent in the three decades before the Civil War. Mr. Loring employs in his preface the overworked Pallas Athene comparison to describe how "the nation . . . sprang to life from the constitution." With that conception of the way nations are born, almost anything can be proved as to our political system. Mr. Loring brings forward enough incidents of our history to prove that there have been many eminent statesmen who wished the constitution to be construed as a paramount national authority, and many others who wished it not to be so construed. He thinks the former were "right," though he never indicates a consciousness of a possible distinction between the moral and the legal significations of the term.

It is hard to speak too highly of the plan and purpose of three works issued by the Statistical Publishing Association, of Washington, and edited by Thomas Hudson McKee. The *Manual of Congressional Practice* presents clearly and in very convenient form for reference pretty much everything that the average student wants to know about the actual process through which legislation is accomplished by Congress. Not only the codified rules of the houses, but the unwritten customs are explained and illustrated, and the whole course of a measure is traced, from its introduction as a bill to its appearance on the statute book, with *fac simile* reproductions of many of the forms which it assumes in the interval. The *Manual* contains also much other information relative to the work of Congress which is not readily accessible elsewhere. In *Inaugurals, 1789–1893* and *National Platforms of All Political Parties, 1789–1892*, Mr. McKee has compiled matter which the political historian and the social philosopher alike will be pleased to find in this form. The *Inaugurals* contains a considerable amount of "padding" in the form of "Historic Notes," which are in some cases rather ridiculous.

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Mr. Spencer Walpole, in his interesting volume entitled *The Land of Home Rule* (Longmans, 1893), gives an outline of the history of the Isle of Man from the earliest times till the present. Relying on original authorities, he discusses the origin of the population, the institution of the Tynwald, or open-air court, during the Norse period, the Scotch conquest and the history of the island under the Stanley family. Among other things, Mr. Walpole shows (page 113) that in Elizabeth's reign, in spite of the fact that the Manx retained their old institutions intact and that their ruler bore the title of king, the queen took possession of the island pending a dispute over the succession. James I regranted it, and Parliament passed a private act confirming the grantee in his possession. The act of 1765, by which the Isle of Man was revested in the crown of England, was passed in virtue of the supremacy of Parliament over all English dominions. Persistent smuggling provoked the measure, and its passage was one of the achievements of the Grenville ministry. But the policy thus inaugurated has not resulted in the full incorporation of the Isle of Man into the Kingdom of England. It sends no representative to Parliament; it retains its Tynwald, though the "keys," or selected members, have become elected representatives, and the governor's council forms a sort of upper house of the legislature. The judicial power of the "keys" has gone to a regularly organized court. The governor, appointed by the crown, exercises large and increasing authority, while Parliament has confined its legislation almost wholly to finance and the regulation of trade. Land tenure and ecclesiastical jurisdiction have long since been reformed, the rate of taxation is low, and the islands are prosperous under their system of home rule.

M. Spuller's *Lamennais* (Paris, Hachette, 1892) is an admirable study of the career of that erratic genius who so dazzled France, and indeed all Europe, in the thirties. The peculiar traits of Lamennais' character are most skillfully brought out by the author, and in his treatment of the environment in which the *abbé* lived, he throws much light on the political and religious thought of the time. M. Spuller's work is purely objective and historical, and it is possible that this accounts for the absence of any comment on the obvious connection between the liberal ideas entertained by Lamennais before his final breach with Rome, and those of the recently developed Catholic Republican party in France.

The *Revue International de Sociologie* has been established to reflect and further the progress of thought in social studies that have become

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fairly distinguishable from the older sciences of economics, law and politics, and are attracting many specially qualified investigators whose work will be materially aided by an organ of communication. It is ably conducted by M. René Worms, and the publishers are A. Giard and E. Brière, Paris. The list of contributors includes most of the well-known French, German, English and American writers on demography, practical social problems and social philosophy. The articles have a rather wide range thus far, and the *Revue* would increase its usefulness by confining itself more closely to subjects that are neglected by other special periodicals. The departments of correspondence, book-reviews and notes promise well. We welcome the *Revue* and hope that it will do much to integrate and organize the sociological literature which of late has been growing rapidly, especially in Belgium and France.

Otto Mühlbrecht's useful *Wegweiser durch die Neuere Litteratur der Rechts- und Staatswissenschaften* appears this year in a revised and greatly enlarged edition. (Berlin, Puttkammer und Mühlbrecht, 1893.) Unlike the *Allgemeine Bibliographie* of law and political science published monthly by the same firm, the *Wegweiser* does not aim at completeness: it consists of selected titles, but it includes about 34,000. As far as German works are concerned, the selection is excellent; for other countries it is not so good, and for England and the United States it is very defective. The scheme of classification is a good one; but in assigning a book to its proper class it sometimes happens that the back is regarded more that the inside — so, for example, Leist's *Alt-Arisches Jus Gentium* is absurdly placed under "Völkerrecht" instead of "Rechtsgeschichte." But the admirable index, in which the same work is often entered three or four times, atones for such errors.

A very attractive organization of our state bars and benches is proposed by Mr. John A. Wright, of the San Francisco Bar Association, in a little book entitled *How to Get Good Judges* (San Francisco, The S. Carson Co., 1892). He proposes, in effect, that the bar of each state be made a self-governing guild, divided into local chapters. Each chapter is to be governed by an elected "Council of Discipline." These councils, united in general assembly, are to determine (under the general law of the state) the requirements for admission to the bar, and to formulate a code of professional ethics. The single councils are to sit as courts for the trial of members of the bar charged with unprofessional conduct. Service on the councils is to be made compulsory. From these councils, which will presum-

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ably represent the very best elements in the bar, all the higher judges are to be appointed. Vacancies in the highest courts of original jurisdiction (the superior courts) are to be filled by popular election, but only members of the councils are to be eligible. Vacancies in the highest appellate court (supreme court) are to be filled by promotion, judges of the superior courts being alone eligible, and the choice being made by a convention of all these judges. At the same time the judicial tenure is to be during good behavior, with provision for retirement at a certain age and a pension; and judicial salaries are to be made somewhat more nearly commensurate with the earnings of corporation lawyers. These are the most salient points of Mr. Wright's plan. It is worked out carefully in its details, — even to the transitional provisions which would be required for its immediate introduction in California. It is, we fear, too good a plan to be adopted; and in this sense only we are forced to call it utopian.

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